UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA Criminal No. RDB-08-056

Baltimore, Maryland

v. April 16, 2009

PATRICK BYERS, JR., 9:30 a.m.

AND

FRANK GOODMAN,

Defendants.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Government: United States Attorney's Office
By: JOHN PURCELL, JR., ESQUIRE
BRYAN GIBLIN, ESQUIRE
36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201

For Patrick Byers, Jr.: WILLIAM PURPURA, ESQUIRE
8 East Mulberry Street
Baltimore, Maryland 21201

A. EDUARDO BALAREZO, ESQUIRE
400 Fifth Street, NW
Suite 300
Washington, D.C. 20001

For Frank Goodman: CHRISTOPHER DAVIS, ESQUIRE
MARY DAVIS, ESQUIRE
514 10th Street, NW
Ninth Floor
Washington, D.C. 20004

Court Reporter Lisa K. Bankins RMR
101 West Lombard Street
Room 5515
Baltimore, Maryland 21201

Proceedings recorded by mechanical stenography, transcript produced by notereading.

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MISCELLANY

P R O C E E D I N G S

THE COURT: Just quickly before we bring the jury in, Ms. Davis, you had noted a slight adjustment to Instruction Number 36 and I've made that adjustment. I don't think there's any -- that was fine.

MS. DAVIS: All right. Thank you.

THE COURT: And then the verdict sheet, counsel, I think you've got copies of the verdict sheet. I just formalized the verdict sheet a little more. I thought it was a little more apt. So I gather there's no objection to the verdict sheet?

MR. PURCELL: Yes, Your Honor. It's fine.

MR. PURPURA: No objection by the defense. Thank you.

THE COURT: All right. Thank you. It's all right?

MS. DAVIS: It's fine, Your Honor.

THE COURT: All right. Thank you much. So that's the verdict sheet and then I noticed there's been some briefing with respect to the matter of alternate jurors. Let me just tell you what I believe is and I've checked with some of my colleagues in other similar such cases, Judges Chasanow and Blake with cases similar to this. With respect to the alternate jurors, they will be dismissed at the conclusion of -- once the jury has been charged, the jury begins its deliberations, I will tell the alternate jurors that they should not review any press reports about the case. They should proceed as they have been and that they will remain on call in the event that there is some difficulty with one of the 12 jurors and that we will

notify them once their verdicts have been reached. Is that agreeable to the government?

MR. PURCELL: Dismissed, not excused.

THE COURT: Not excused. They are not excused. I'm going to tell them they are on standby. That they're not dismissed yet from the case.

MR. PURCELL: Exactly. That's fine.

THE COURT: That they remain as alternate jurors in the event that there's some health problem or something with one of the 12 jurors and with that, in that regard tell them that they absolutely shall not review any press reports. The same admonitions apply. Is that agreeable to the government?

MR. PURCELL: Yes, it is.

THE COURT: Agreeable to the defense, Mr. Purpura?

MR. PURPURA: Yes, judge. I think the language should be until the completion of the case, not until verdict because you may need them --

THE COURT: Well, I understand. Yes. I understand. Yes. Just until the completion of the case, until the completion of the case. Is that agreeable to Mr. Goodman's counsel, Ms. Davis, as well?

MS. DAVIS: It is, Your Honor.

THE COURT: All right. So that's the way we'll handle that. So we're ready now to proceed with rebuttal argument by Mr. Purcell and then what I propose is that I'll -- I have gotten good feedback from jurors. It may be a blow to my ego. But they've all told me

it's nice if I break up the instructions sometimes to other jurors. They find that the jury instructions are a little bit mind numbing is what one juror once told me which is certainly understandable after the eloquence and charisma of trial lawyers, to have to listen to a trial judge drone on with the instructions. So what I propose to do is, Mr. Purcell, after you finish your rebuttal, depending upon the timeframe, I'll probably start the instructions and then stop midway through and give them their morning break and then complete instructions. Unless there's any problem from the point of view of counsel on that, that's how that will be handled. And we have I gather Ms. West has got some lunch menus in there for them. Is that correct?

THE CLERK: Yes.

THE COURT: All right. Well, with that, unless there's anything further, we are ready to proceed.

(Jury present.)

THE COURT: Good morning, everyone. We're ready to now proceed with the conclusion here of the case. So we have rebuttal argument from the government, from Mr. Purcell and you all may be seated and then I'll give you the instructions on the law and we will be taking a mid-morning break and you've had your lunch menus. So with that, Mr. Purcell -- one thing, Mr. Giblin, if you can help Mr. Purcell for one second? If you could just move this easel back a little bit so I can see? I just barely see all the jurors. I'm blocked out from Juror Number -- just pull back some just so I can see

the jurors. I just can't see Jurors 7 and 8. That's fine. That's perfect. That's good. That's perfect. Thank you very much. Okay. And with that, we are ready to proceed. Mr. Purcell, rebuttal for the government.

MR. PURCELL: Thank you, Your Honor.

Well, good morning, ladies and gentlemen. This is the part of the trial that I wish that we could just put in front of you a little green light that indicates just push the button if you get it and then I'll just sit down and wouldn't have to go any further. I think at this point if I were to say to you do you get it, there would be 16 green lights going on. Because I can't do that, I have to proceed and I will not be nearly, nearly as long as I was in opening statement. I will not be nearly as long as any of the arguments that you heard yesterday presented either by my colleague or by the defense.

I wish however to address on this very important day some of the matters that were not addressed by the defense yesterday. And it is an important day because finally today, finally today this long after July 2, 2007, you will get to begin your work to review the evidence and finally, deal with this crime the only way our civilized society allows us to deal with it by considering it by a jury and you rendering your verdict and that process will begin today and it's about time.

Now yesterday I had the benefit and you had the benefit of not having to hear from me. You had the benefit of listening to

arguments from the defense and they were very interesting and I think I didn't put a stop watch on it, but I know that a predominant part of the time of the argument made to you was spent on one person and that of course is Mr. Pearson. And it was suggested to you, it wasn't suggested, it was urged upon you and you were told in a most convincing way that somehow Mr. Pearson is the glue in the government's case. That he is our case. Well, I think if you were able to put your green lights on and you'd say no, we understand that is not our case. He is part of our case. A part that the prosecutor, he's part of, he's one of these damned if you do, damned if you don't sort of witnesses. If I don't put him on, where is Pearson? If I do put him on, it's let's spend days and days cross-examining him and the predominant part of our time in argument condemning him and by association the government. And what I would try to ask you to consider today is he's not the glue to our case. In fact, Pearson who made six, I think at least six prior tape recorded, videotaped, multi-hour statements on his own without a lawyer by his own choice incidentally and I wish if he had just invoked at some point, all of that would never have been done. But that's not the way Pearson and Byers and Goodman operate. They are their own lawyers. They don't believe in lawyers. Lawyers are the very last place they go. They're businessmen, but they're street businessmen. A real businessman doesn't put his tie on in the morning without calling his lawyer. A street businessman, a drug dealer, a lawyer is the last guy to go to. These guys are enterprising and they take care of their problems as

we've seen themselves. They deal with the police themselves. The best example of that in this case, of course, is Pearson trying to lie his way, finagle his way out of well, out of this, his essential position in the case and Goodman and Byers doing exactly the same thing. Byers of course doing it the day of the Haynes' murder by interposing himself as a helpful associate, helpful informant to the police, Officer Jenkins. Hey, I heard about a tall guy who threw a gun in an alley after shooting Mr. Haynes, my friend, with no name, no first name in this case or no last name, told me about this, he was there. And by endearing himself and these are all juvenile tactics. If any of you have children, you have an idea or if you're teachers have dealt with teenagers and this is not sophisticated things we're seeing, these tactics we're seeing from these defendants. It's just what they think will work. I know what I'll do. I'll just impose myself and make it look like I'm trying to help them and they'll never suspect me. Well, that doesn't really work and I'm glad they did it here and that's what they do. That's what Byers did. That's what Pearson did.

Now Pearson, his persistence, his July 5, I'll give them Cornish. I wish they had just stopped then and said we're done. July 7, I'll get you the gun and then July 31st and August 26th and 27th and 28th and I think it's the 30th. Just, you know, he's now being dragged into it. He can't himself. He's dug himself a hole he can't get out of. But what he did is he didn't glue my case together. He glued his case together. If he had just shut up on July 5 or

July 7, they would have been up here yesterday for about two minutes because they didn't talk about the evidence. They didn't talk about the real glue to the government's case.

The real glue in the government's case isn't named Pearson. The real glue in the government's case, his name is Byers and his name is Patrick Byers, Jr. Is Patrick Byers, Sr. back there, his trainer? Congratulations, dad. Your son has made it to the big leagues. Patrick Byers, Jr. is the only thing in this case, the only component in the case, the crystallizing force, the unifying force that makes sense of everything else. There can't be a Pearson without a Byers. There can't be a Goodman without a Byers. It's all about Mr. Byers. And all Mr. Pearson is to them is a gift to throw at you and say the government relies on him and talk about his many, many, many tapes of lies. Well, you know what? We know he lied. We know that. We gave them the tapes. But, you know, you're damned if you do and you're damned if you don't. So we don't rely on Pearson.

Now his phone I will not say that about. I'd love his phone. His phone is excellent evidence. Unfortunately, he comes with it. But whether Pearson is as indicated over here which is where he is. I think we saw his attorney here again today watching. He's pled. He's facing a possible sentence of 35 years. That's an agreed sentence by the way between the government and him. Judge Bennett is not a party to any of these sentences. Judge Bennett can accept or reject them. We have no idea what he'll do and I suspect he doesn't either at this point. And if you don't like those sentences, those

agreed upon sentences, put it on me because my name is on each one of them. And if you don't like it, there's another name on the top of it who's the U.S. Attorney, call him and complain to him. But whether Pearson sits over here as a government witness or if he had that day, July 5th, after he tried to help the police with that what he had heard about, you remember the first day the police met him by tracking his phone and they tracked his phone, folks, because if you remember, his phone, his phone. It's not about Pearson, folks. But I'm never going to give up Pearson's phone. Pearson's phone. He made a really stupid mistake. He used his own phone. Went through the effort of getting a burner phone, buying a chip, putting it in an old phone like he told you just so he wouldn't get caught and he called Mr. Lackl and he did that at 3:46 p.m. Now that was the key that led us to Mr. Lackl. The police, the detective. I wasn't involved. The feds, as we are referred to, were not involved in the case until much later. But the detectives from the county because this was a county murder at that point were working on it. And they were tracking his phone and Pearson came along with it. And he gave as Byers did. Remember when Byers was caught in the Haynes' murder? Immediately -- well, actually before he was caught, before he was even implicated, he was calling Detective Jenkins and passing off some other information. That's what he did. I heard, I heard said Mr. Pearson that this guy, Brazy, did something for Pat in jail and I think they were on the phone. Of course, they recorded it. You heard it and you have it. You can listen to it. And what happened in that conversation? Mr. Cornish

just -- I mean he's 15 years old. It's like one of the sadder -- it's sad. Everything in this case is so awful. You saw him. Is he that bad? He's a 15-year-old kid, of course. And 15-year-old kids, history has proven time and time again will do anything. 15, 16, 17. They'll do it. Peer pressure, whatever reason. They'll go out and kill somebody. They don't know any better. And he did know better. But, you know, he did it. He was exploited. Went along and he's going to pay the price. But he answered that call from this very same phone and he answered the call from the very same phone that was called later that day by Mr. Pearson and they were setting him up after he called Trigga to get him recruited. Same phone and he's using his same phone and he says yes, shot a white guy with a .44, shot him four times and after that, it was over for him. There was no Cornish trial. Cornish is done. And imagine, just imagine after that that Detective Ruby had said we'll maybe wait another day, two more days and get the gun back. The gun in this case is a nice ornament. It's a nice piece of evidence to have if you have a gun and it corroborates what Pearson told us tremendously. But we already knew it was a .44 because unfortunately, one of the .44s that went through Mr. Lackl was recovered. So we knew it was a .44 and that corroborated what Mr. Cornish said. It was a .44. But the gun was nice. But Detective Ruby knew this and he's not about to stop investigating and stop talking to a guy who doesn't want to stop talking. The guy that would keep talking. But when he talked, the more he talked and ultimately Pearson came around to Mr. Saunders, met

with him and has a federal defense attorney now. Told him you're done. Time for the truth. In the interval, he gave them their defense, which has been thrown at you over and over and over again. Well, let's just step back for a second and think what if Detective Ruby had said after he got the gun and maybe Mr. Pearson told him. This guy, Pearson, who got his phone calling the family. Cornish obviously is going to talk and obviously and soon did would have given him up anyway, that is Pearson. We wouldn't have to worry about that. Pearson is over here. He would be convicted in a moment, wouldn't he? Well, he's with them. Pearson doesn't do a thing without Patrick Byers and of course, he couldn't even begin to do a thing with Patrick Byers without Goodman. If the investigation had stopped with the seizure of the gun and there were no more calls, I'm sorry, no more meetings with Mr. Pearson, there wouldn't be any defense. But we still would have had, the police still would have had, the government still would have had Pearson's directory. All Pearson did by not giving up those numbers in his directory and this is a blowup. This is Exhibit 408. And 408 is a blowup of a particular page and these are numbered. You'll find 163 and 175 in your directory and you'll have a copy of it. You do have a copy. But you have a copy here of the most important part. Trigga is in there, Killa is in there, they're all in there. Fat Jay is in there, the common person between Pearson and Mr. Byers. The common link. Now if you are following and I hope you are, if Pearson had just been locked up on July 7th after they got the gun, he would have been around to conceal that until late

August which is what he did. He never told anybody until August 26th. He told Detective Childs, who is I think here today, finally, oh, yeah, those guys are in my directory and if you recall, I asked a couple of the detectives and I asked Pearson why didn't you give that up earlier on and Pearson in his monosyllabic response said it would have put me in the middle and the detective said, Detective Ruby said and Detective Childs said it would have put him in the middle of it and that never would have changed. These records, these phone links, the witnesses, Cornish, Ms. Graham, all of them would have exactly remained the same because everything they did remained the same and their testimony would have remained the same. The only thing Pearson did is give the defense a gift from trial heaven and that is something to throw at you and to suggest that our case depends upon him. So strip him out of the case after his arrest and after he gives us Cornish which is what guys like that do. It's what Mr. Byers did. And nothing else changes except they don't have a defense, something to yell at you about and we would have found this a lot sooner. And what I mean by that is he distracted the police. He was a live lead that the homicide detectives were working and he told you, Detective Ruby told you, they were getting boxes of records, boxes of phone records and they were subpoenaing everything. Once they got Pearson's directory, they started looking at the chronology and started getting the records. They didn't make sense of it yet. But that's largely because he was keeping them distracted. It didn't take long after that distraction and with the arrest of Mr. Goodman and Mr. Byers in

September that we were able to pick out the chronology. Now this chronology is the same today if we are just beginning the investigation today as it was then. These relationships between these phones and the phones in that directory and these people and those people sitting over there never ever change. Mr. Pearson only helps their defense, helped the defendants and helped himself primarily by not giving up that link. He's not my glue. His phone is. But he's not. He's all they have. And I'm sure when the defense attorneys got the package we call discovery that had the six videotaped discs in there, thank God, we have a defense. Now we have something to work with. We tell the jury Pearson is their main guy and we just hammer him, you know, hammer him. He lied for six weeks incrementally moving towards the truth because the truth is inescapable. If he had said nothing, if he had said nothing, would you really need Pearson, would you need Pearson to tell you what he might be talking about, but Patrick Byers. You have a record in there by the way. One of your pen link reports shows and Ms. Gardner is not here. Do you know what that means? I can't play any videos or tapes or anything on the overhead. We have to look at some big exhibits and I thank God for that because that's not what I want to do. But I do want to point out this. Do you really need a Pearson to tell you once it's established as it would ultimately have been established with Cornish's help and Ms. Graham's help, Cornish would have immediately said of course once he began to cooperate, yeah, I shot the guy. It was Mr. Pearson who recruited me to do this and we drove out to Philadelphia Road and

Tammy would have said and all the same and it would have all been on Pearson and now we would be asking the question why is Pearson who takes the shooter out to Philadelphia Road to kill Mr. Lackl for whom none of these people, with whom none of these people have any relationship at all, why would he be talking to Byers and Goodman and particularly Byers, particularly Byers? The relationship with Goodman would have required a bit more work to figure that out. But you know, they're detectives and they figured it out. But unusually, the only calls we have at all between Pearson and Byers are this day.

Now without Pearson as a witness and with Cornish telling you what he and Pearson and Tammy did, would you really need somebody to come in and tell you in a very, as I said, almost guttural fashion, would you really need him to come in and tell you what they were talking about? Here I'm talking to Mr. Byers and this is Pearson and then he calls Mr. Lackl and then seconds later, minutes later, he calls Mr. Byers again. Now the detective would have figured out that that subpoena in the house was for the trial of Mr. Byers and just eight days after the murder and this is the only time these guys have ever talked and later that same day, this guy who's talking to Mr. Byers killed or took a 15-year-old kid out to Philadelphia Road to kill Mr. Lackl. And then he's talking to him. This is the same exhibit highlighting the calls I was just showing you. This is 393. Do you need Pearson to tell you what these calls were about? On this particular day, the day Mr. Lackl was murdered and he's conversing with the guy who was the only person in the world to benefit from

that? This is before the murder. Of course, this is a blowup of this top part of 343 that you all have. And then would you need Pearson to tell you assuming Cornish and Tammy are still in the game, still as witnesses which they would have been because they would have been linked to Pearson's phone. Cornish gave himself up in that first conversation. He was done and he knew Tammy. Nothing else changes. All we're taking out of the equation is the words out of the mouth of Pearson. Everything else is the same. So do you need Pearson to tell you what he said minutes after he leaves somebody out there to kill Mr. Lackl at 8:45 on July 2nd and the first couple of calls he makes after Jonathan Cornish calls to tell him as he goes to meet Mr. Goodman downtown to get his $2300, he calls Patrick Byers. He calls him back. He calls him back. These are all calls between Goodman, Byers and Pearson. So do you need anybody to tell you what was in those conversations? And actually do you remember even what he said? Basically he said I told him it was done and he told me that he had some other guys that would like me to do the same thing. And then I called and he says I called Goodman and said I'll meet you down the way. And Tammy if you remember Tammy Graham told you yes, we did meet with Goodman. She was indifferent about it because she didn't know at that point what happened. But she does remember that on the way back, he said he called somebody and said I'll meet you down the way.

Now that her testimony is essentially benign. But it's highly corroborative because she sees the meeting with Goodman and she hears the comment, I'll meet you down the way. They do meet down the

way. I don't know if they met at Darling or Cliftview. If you look at the map, these streets all angle in from Harford Road and they hit at the same place. You can stand somewhere and meet on both Cliftview and Normal at the same time and Darling comes up right behind there. We have maps to show that. Now did you need Pearson for that? Did I need Pearson for that? I mean who do you think they were talking about?

Now when I say to you I wanted to talk to you about what wasn't mentioned in closing, I'm asking you to think now back to what Mr. Davis, unfortunately who's not here today and Mr. Balarezo, who is here today, what did they say in their combined four hours of argument to you? Did you see these exhibits? Did you hear any explanation beyond condemning Mr. Pearson in which I largely join. Did you hear anything about these conversations? Why was Goodman's T-Mobile doing calling Byers' father two days before the murder? They didn't discuss it. They can't discuss it. You can be a great lawyer or even a not great lawyer, but even a great lawyer can't explain that which just can't be explained except for the obvious fact. Just stay away from it. They just left it alone because nothing they said would have made any sense. So they just said, well, you can't tell what the duration is or other people used the phone. Now I'm not really sure what that's supposed to mean. But let's just consider that for a second. Are we supposed to believe that there's somebody else in the Baltimore City Jail who just coincidentally borrowed Mr. Byers' phone on the day of the murder to arrange to kill without him knowing anything about it

Mr. Byers' only untarnished identification witness for the trial that was coming up in eight days and just happens to be on the day that the guy is killed? I mean come on. But nobody else was using the phone in the conversation between Pearson and Byers and Pearson and Goodman about this. And we know, we do all agree, I think it's agreed upon everyone in the courtroom that Mr. Pearson was in the middle of this and is responsible for the murder. So if you believe that, if you believe Pearson is involved in the murder which I think we all agree and it's undisputed, then what is he doing talking to Byers and Goodman on that day? And that is something that was never ever addressed. They showed us the box from the T-Mobile. The T-Mobile phone is not the phone that Mr. Goodman used to talk to Mr. Pearson or talk to Mr. Byers. He spoke to Mr. Byers, Jr. I think one time on the T-Mobile phone. Maybe twice. You'll have a record of that back there. I know there was one on the day before the murder. Here's Patrick Byers, it's T-Mobile and then he calls him again on his regular phone. But the Nextel, the blue phone, the direct connect phone, that was used to communicate with Pearson and Byers by Mr. Goodman, that phone, the phone that was taken from him when he was arrested, that's the phone linked to Mr. Goodman. That phone goes right to Mr. Byers and that phone by the way talked to Mr. Byers. Remember those sheets we have of contacts just between certain individuals and Mr. Byers? They're like broken up in color codes to show which evolving number or changing number that they're in touch with. They look like this. The red which is -- this is actually the

second and third page. But the yellow is the second phone. The purple is for the third phone. We have those for Goodman. Hundreds, not hundreds, but many, many, many, many such calls. That's the phone that was taken from Mr. Goodman.

Now getting back to the things that they were not talking about. The main thing they were not talking about, the phones. Did you hear any explanation for those calls by either Goodman or Byers? No. And there's a reason for that. So they can't explain it.

So I guess my point to you about Pearson, he's not my glue. He's their glue. He's their whole defense. Attack him, show what a piece of crap he is, how mean he is to women and how he made things up. We know that. We know that. That doesn't matter. That's not why he's valuable to us. We love his phone. His phone made the case. The case probably would have been made ultimately anyway. But by that red line mistake right there, that allowed the police even though he threw out the burner phone, that allowed the police to find him, take that phone off his person and make him start explaining it. His first explanation, he gave up Cornish who stupidly and honestly admitted his role. Pearson for all I care could have been arrested and sitting with those guys from that point on. All he did after that is obstruct the investigation by not allowing us to get to these phones faster and provide them with a defense in a case to which there is no defense. And that's the simple fact. You didn't hear about these things yesterday because there's no explanation for them instead let's look at clip after clip after clip after clip of Mr. Pearson lying. Well,

you know, I didn't show you clips of Goodman and Byers. I showed you the whole thing. We played the entire tapes with Detective Martin. You heard from Detective Jenkins about his encounter with Mr. Byers. And you heard Mr. Byers and Mr. Goodman's interviews on the 5th and 7th of September respectively. And did you see something familiar in those conversations, in those interviews? Exactly the same thing. I don't know him. I don't know Goodman. I don't know Byers. I don't how many times Peter denies Jesus. But these guys far exceeded any sorts of biblical proportion denials. These are denials beyond that. Byers denying Goodman. Don't know him, don't know him, don't know him. Never saw him before, never visited me. Why would anybody and did you hear anybody say, did Goodman's lawyer or Byers' lawyer tell you why on earth if they're innocent, why would Byers deny Frank Goodman? Why would he deny knowing him? Why? No explanation for that. So they didn't explain it.

Detective Jenkins, I mean I was listening to that and when that came up in the discussion about the I guess it was the Haynes' case, the defense, Mr. Balarezo simply said about Detective Jenkins, I don't know why Jenkins came in and said that and he just moved on. Well, let's stop for a second and ask ourselves why did he come in and say that. Because it's true. Byers called him. Gave him a false lead. Tried to cover himself up. And then when he met with Detective Martin on the 20th of March when he was finally arrested for that, has to create a whole new scenario because he doesn't know what the police know. He doesn't know whether the gun was recovered with his

fingerprints on it. So he has to create an explanation for why a gun with his fingerprints on it might be found in that alley. He said I left one there for Officer Kevin. Officer Kevin, Tony, doesn't even know first or last name. Do you really need to turn your green lights on? Do you really need me to go through this with you to see what these guys do? They just lie. They sort of fabricate as they go along. And their lawyers, of course, work with what they have and what they have is Pearson.

If we had heard explanations about those calls, there would be a real reason for me to have some rebuttal up here. But what I'm going to ask you to do is basically strip out Pearson after Cornish, after that call, put him over there, and you'd be voting on three people today instead of two. And he just makes my case easier sitting over there. He didn't help me.

Let me make a point about this. There's been a lot said about these plea agreements. Look at Tammy Graham. Use her as an example. It would suggest that I guess that Tammy Graham as it was suggested of Pearson, as it was suggested of Cornish that, you know, they sign the plea agreements. But they're saying whatever it is I want them to say. Well, I wish someone had, you know, told me that comes along with this job when I flip somebody and get them to do a cooperation agreement and they plead guilty to a certain number of years, that I get them to say whatever I want them to say. Do you remember Mr. Pearson's testimony? I mean the transcript for that testimony can be -- well, I could order it and if you'd just took out

the answers, you got the questions, just put the answers in the transcript would be yes, no, correct, correct, correct, no, that's not what I said, Pat was there, I did talk to Pat, I didn't make that up. But if I had known I could, you know, have him say whatever I wanted him to say, I would have had him say a whole lot more about his relationship with Pat, about the substance of their conversations. I would have, you know, I could have come up with a lot of good things for him to say. He told me what happened. These guys, you know, he called Byers that morning and you can see where he called him. It's right before the red line where he called Mr. Lackl. Right here he calls Mr. Byers for one reason. His money is good. Goodman is telling me that money is good. Didn't take a minute. Didn't take two minutes. Yeah, it's good. And of course, Goodman was the money man. That money wasn't mailed out of jail. Goodman had it. In fact when there was a beef about the money. I'm glad it was short because it made Mr. Pearson call Mr. Byers again. Byers told him Goodman will take care of the money. It's Goodman's money. He's taking care of that. He's the guy with the money. But if I had been able to make them say whatever I wanted them to say, I would have come up with some enlargement on those conversations. I would have had a broader base of their relationship. But actually on the narrow base of the relationship served us just right, doesn't it, because it puts it all in perspective. The only day they had a relationship was the day that Pearson got somebody out there to kill the witness, the only untarnished witness against Mr. Byers. Ms. Graham it was suggested,

of course she's saying whatever I want her to say. She got a deal. They are giving her basically a plea to just lying. Well, yes, and she was charged with a first degree murder in Baltimore County. And yes, I did dismiss that charge. I did have that done. That was me. Now do you think she was properly charged and she should be facing a first degree murder charge, then call that number on the top of the plea letter and let somebody know. Do you think Tammy Graham knew anything other than what she told you she learned that day when she got to the hotel? Obviously, if you do, we don't agree. Sorry. If she lied, she's prosecuted for that. No matter what she does. She could tell me tomorrow I'm not testifying, no way, never going to testify again, I don't like it, I can't do it. And she was here for you to see and hear and that's why we bring them in so you can make your own evaluation and judgments and I submit to you she testified as a truthful person when she told you her whole role. But if she were to tell me I can't do it anymore, Mr. Purcell, I refuse to testify, I couldn't turn around and say well, we're charging you with first degree murder. I can't. I've stipulated to the fact that she isn't involved in a first-degree murder. I can't unstipulate those facts. She's telling you what happened. And if I could have told her to say more, if I knew I had that power, I would have had her saying yes, the whole way out there he was talking to his friend, Patrick Byers, Pat, in jail and they were talking about the contract murder they were about to do. And afterwards, she met with Frank Goodman and he came back and I counted $2300 that Patrick had sent through Mr. Goodman to

pay him for a contract murder he had just done. But she didn't say that because she didn't know that. She did know though and I'll take it that on the way back, Pearson said I'll meet you down the way and she met with Goodman. I'll take that because, you know what, because that's confirmed by the phone records I don't need just her. But it's also confirmed by the cell tower records and it's confirmed of course by Mr. Pearson. And in his own way it's confirmed by Mr. Goodman and Mr. Byers who deny they know Pound and deny they know each other and there's a reason for that. You know, people don't lie without a reason. They just don't unless they're sociopaths. Otherwise, lying is hard to do. Particularly the important things and these were important lies and these guys when they were confronted with do you know each other, they knew what they had done. No. I don't know. They didn't know what the police knew. So Detective Ruby is really great at that. He's trained other detectives. He started his interrogation way out here and he works their way, he takes them 20 minutes to get to what he really wants to talk about. They have no idea what he really wants to talk about. It's great. It's not fun to watch, but it's interesting to see. And they deny each other over and over and over again. They deny pictures, any contact. They denied any phone contact with each other. Sorry. We have your phone records. We know you had phone contact with each other. And you can't do anything about it and you can't get off of that hook by saying, bringing in some expert from Florida and saying I can't tell there's any duration here. Let me talk about that guy for a minute.

I'm sure he's a wonderful electrical engineer. I can never -- I barely got through the education program much less electrical engineering. And he is probably very, very good at what he does. But he didn't have the information. When he was making his analysis to you or his opinion to you about what these durations mean, his whole fundamental premise was based on that this was all information based on what's called a DNR which operates completely differently in terms of generating duration records than a billing record. And you heard it. We asked him. The first question. Now we let it go. So what are you basing this all on? What's your opinion as to -- I think Bryan was asking what's your opinion as to what's the source of these records and in a pen link and he said I believe they come from a court-ordered DNR and that is a way to get such records. That's how we got these records. These are billing records. And if Nextel does not bill you -- if I pick up the phone to call you, you are going to get billed for that if you don't answer the phone. Would you want to get a bill where you're getting billed for people who are calling you and you're not answering the phone? It's bad enough as it is. So they don't do that. But he didn't know that. And they didn't know it. And that's not my fault. But don't bring an expert in who doesn't know what he's talking about. Prepare him. I'm sure if we asked him about how cell towers work in some mechanical way, he would wow us all. But his premise was incorrect. Sorry. They wasted their money.

And really, the point isn't the duration, is it? That

doesn't answer the basic question. You know, I really don't care how long they were talking. Why was Pearson calling Byers on this day? Why was Byers calling Pearson on this day? Why was Byers talking to Goodman all the time? Why was Pearson talking to Goodman on this day, the day of the murder right before the calls to Mr. Lackl, right after the murder of Mr. Lackl? We did not hear a word about that. We just heard there is no evidence of duration. But we heard no explanation as to the contact. It's the contact that makes the difference. And how long does it say I'll meet you, how long does it take to say I'll meet you down the way? Time yourselves back in the jury room when you're deliberating. Test the theories that have been presented to you in that room. You may do that. But you know, I wouldn't even have to speak to you if it wasn't for Pearson if he didn't go on and on and on. He was their glue. He was a gift to them.

Now I do have some notes that I'm going to blow right through very quickly because there's a couple of other things I wanted to mention to you. If you have a pencil or a pen, I don't think you really need it. I was going to ask you to point out to you the exact line numbers of these calls. But if you use these smaller exhibits and there's nothing edited out of them. They're exactly the same as the large exhibit except they focus -- the line numbers are exactly the same. But these are all the contacts right after the murder and this one which is the red line is exactly the same as without any exclusion as that top part of that exhibit. And just look at Byers and Pearson, their call. And then who's he call? Pound calls Byers.

Did we hear anything about why that happened? Why would they do that? They can't talk about that. So they don't. But nothing is excluded. Now what's the middle part? The middle part of that exhibit is Pound arranging for the murder. Calling Lackl, calling Mr. Lackl's home. And you have this exhibit. This is exactly the -- this is 343. So it's what you all are carrying around and you have it. But here you can see his contacts with Trigga, his contact with Brazy, his contacts with the burner phone are all to Mr. Lackl. They're there. They're there. They're there. Want to come out and look at your car. This exhibit, 304, which I think you all have is one the defense does not want you to see, look at or discuss. But it's what Pearson was trying to evade. It's what Pearson was trying to avoid because as I say, if he had given up that he had Goodman and Byers' numbers in his directory, all one has to do then is look at his phone records or their phone records or Byers' phone records for that day and see the interplay between the numbers. It doesn't change. You don't get to manipulate these records. They are what they are. They are today as they were then and that's how they are. And by his not revealing that, as he said, he kept himself right out of the middle of all this. Put it off on somebody else and as he said, he was hoping that Cornish wouldn't talk. Wrong. Cornish had no choice. He got tricked into confessing and that's good. That's good police work.

Every page I turn is something good for you. If you do, there was a snippet that if Ms. Gardner had been here, I was going to ask her to show you. But you'll find it yourself. If you watch the

tape, don't start with -- you watch all the tapes you want. But don't start with Pearson. His case is over. He's done. We know he's a liar. We know what he said. We know what he did. So entertain yourself if you want to watch a guy lie for six hours. My suggestion to you is you watch the tapes of the two defendants on trial first, Mr. Goodman and Mr. Byers and you'll see them do basically the same thing. But the snippet I wanted you to see is when Detective Ruby presents Mr. Byers with a copy of what some people have referred to as the exhibit list, but which is in fact the subpoena, the subpoena from Roland Walker's office which handily provides Mr. Byers, I'm sorry, Mr. Lackl's address, but not his phone number, but his address and he presented this and Mr. Byers said that stuff is not mine, a piece of paper found in the box a few days after the murder of Mr. Lackl and it's paperwork at city jail, this piece of paper which was not discussed at all. Was this discussed at all yesterday, Mr. Balarezo in his two and a half hours? I'm not faulting them for it. A good lawyer never talks about something he can't explain and these are good lawyers. I don't know if they're the best lawyers in the world, but they're very, very, very, very good lawyers. And I'm glad I have evidence and not rely on argument because evidence always wins. If this document, the snippet I wanted you to see was Mr. Byers was presented this particular piece of paper that was taken out of his property and he denied it on July 12th and he denied it on September 7th and he said who are those people, I don't know those people.

Now on one hand, we have the defendant saying I don't know anything about my case and he told Detective Ruby on that tape all that Bates ever does is ask me for money. Now we know that's not true because Mr. Bates actually takes his phone calls from the jail the day before the murder and the day after the murder on his own personal cell phone from Byers' personal cell phone because he's a helpful handy lawyer. Call him on your jail contraband cell phone the day before and after this murder. It wasn't a witness, but I would have loved to ask him a few questions.

We got to see instead Mr. Trout. What a team they must be. Mr. Trout is in the recantation business. Walks around the street with his preprinted recantation forms. I'm sorry. His tell-the-truth forms. I think you probably can make a good living in Baltimore City going about and getting people who have told the police that they saw a murder to recant. You show up on your front door and say yeah, I've been hired by Mr. Byers, you know, the guy who's in jail now facing a life sentence who you know about and who shot that guy, Carwash, right in the gut a couple of years ago and shot Larry Haynes five times in the head. Yeah. You have a wonderful house and family here. Oh, and by the way, here's my recantation form. Why don't you just tell me the truth about what happened? You know the truth that you really weren't there. The guy makes a living doing that. He does it all the time. So what a great team they must be. They must be very, very good business in Baltimore City getting people to recant and pretty easy when you live right down the street from the guy that you

implicated in the murder. But that little snippet that you would have seen and you can look for yourself, he doesn't know those people. But of course, he did. Of course he did. This is a guy who spends a lot of time trying to get out of jail. Not go to trial, but get out of jail and there was not a word, not a word about this exhibit. What it meant, where it was and what he said about it, what Byers said about it. Not a word. And this, not Pearson, is the glue that holds our case together. All they needed now was the phone number. They have the address. How did they get the phone number? I don't know. I don't know about that phone number. Maybe Goodman, maybe Senior. Who knows? Somebody got it. Somebody went out and looked at that house. I asked Ms. Humes who may not be here, I asked Ms. Humes how long was that car for sale early on and I think you heard testimony three or four weeks ago. She said only for about a week. So somebody in that week before the murder rolled out to Philadelphia Road, saw that car for sale, saw the phone number on the car and Carl, of course they had his name already and called and then they sent Mr. Pearson out there who obviously didn't know how to get out there. He had to ask his girlfriend how to get to Philadelphia Road. They knew to call Carl and ask about the car that he had for sale. That all happened in a week because that car was only out there for a week. And you know, I don't know. If the T-Mobile calls between Goodman and Byers' father a couple of days before the murder, I don't know. I know that, I know that Mr. Byers when he was asked about that, I'm sure the Byers' team was happy to hear this. But his explanation was -- actually, I'm sure

the Goodman team was happy to hear this, too. Yeah, that was about heroin. I used to sell heroin of course and when I got out of jail, I got my son into the heroin business so he would have a source of supply that wouldn't kill him. So father and son team and he told you that was about heroin. Now this must be something that runs in that family because when he's asked about that call which looks a lot like somebody talking to Goodman who we know is the person who transferred the information to Byers, he said heroin. I mean that's so stupid. He defaults to a heroin crime rather than talk about a murder. Now who else have we heard that does that? Oh, I'm sorry. His son. When asked about the Haynes' murder, embraces being a drug dealer to cover himself. Well, I'm a drug dealer. I'm not a murderer. I would have never even dreamed of shooting the guy who I just told you I suspect of killing my two cousins four days ago, five times in the head and there's been no other person with a motive or recent motive to kill Mr. Haynes presented. Of course, Mr. Byers brought that up without any mention by Detective Martin. You know what, these guys really need to learn to shut up and get a lawyer rather than try to handle it themselves. They're just not good enough. They're just not -- Mr. Byers, next time get a lawyer. Don't talk. They just get themselves in trouble. But he must have learned that from his father. Embrace a different crime to cover the crime you really did. Now if you can't see that, if you really believe that Frank Goodman was calling Mr. Byers, Sr. about getting some heroin, well, you know, I can't do much about it. If you do because I can't control what you believe. You

did take an oath and your oath is that you consider the evidence, you know, with each other and openmindedly and intelligently. I don't believe any of that, any application of those characteristics to that statement would result in believing that this call was about anything related to heroin. It wasn't. That's a little bit beyond my proof. Just don't know. And it really doesn't matter, does it? But it's there. And it wasn't explained. Rather we're told about the duration. Those were both one-minute calls incidentally.

Now I don't know what to say about Mr. Parham that hasn't been said. It goes to the second part of the defense strategy which is to convince you that there was no motive. That in Byers' state of mind, he was not interested in killing a witness. Now I just propose to you that that's sort of defeated by the fact that Mr. Lackl is now dead. And the only person on earth with a motive to kill him is Mr. Byers and his associate, Mr. Goodman, for their own purposes. So, you know, if there hadn't been these conversations on this particular day with the particular guy who we all know is the murderer, I might say okay, well, maybe there's some other explanation. But there isn't any other explanation. We all know that Pearson was involved. Pearson set the murder up. Pearson talked to these guys only on this particular day.

Now as to Mr. Parham, what we see there is just more evidence. I mean if I could ask you yes or no, green light, yes, red light, no, do you believe Parham when he said he wasn't there? You know Parham, they're suggesting to you had some sort of immunity that

allowed him to finally come in and tell you that he really wasn't there. Well, he was all ready to go to trial in July of 2007 where he would have done exactly what he did here there and he would have not had immunity in state court. You know, he's not concerned about immunity or anything. There's nothing I can do to Mr. Parham that he cares about. We are far too civilized in our legal process to affect a guy like Mr. Parham who actually lives right down the street from where Byers and his friends run the drug corner. Sorry. But however many marshals we have in here and in our courthouse and around the building, we're in a very protected little fortress here. Mr. Parham lives on the street. Every now and then a district patrol car goes by. That's it. And he doesn't care how this trial goes. He doesn't care. He's right about that. He doesn't care what happens to Byers, he doesn't care what happens to Goodman as long as he did what he's supposed to do which is not to tell and the last word he said, I'm not telling on anyone from the stand. That's the last thing. Okay, world, everybody here, anybody who sees him can testify he did not tell. That's all he wants. Now he may have to answer a few questions down the line about why he identified Mr. Byers in the first place. But you know, he's going to have to explain those things on his own. Maybe get Mr. Trout to protect him. He was -- well, I can't give you my opinion and I won't. You have to make your own determination and that's again why witnesses are brought to you so you can evaluate them like you do everything else in your life and say is that guy being truthful or not. But I think that probably to assist you in your

determination as to how truthful he was to learn that without anybody on our side of the bench knowing, without the government having any knowledge, Mr. Byers and his new cell phone have been in contact with Mr. Parham on the very day. He finally was going to come into a courtroom and testify about his identification of Mr. Byers and that was March 12, 2009, this year. Last month. And on that day, he finally came in and in a room right down the hall told prosecutors and agents I wasn't there. That was the first time he told anybody other than Mr. Trout and Mr. Byers who knew all along, didn't tell the state prosecutors and they did leave Mr. Lackl out there all by himself. And yet, Mr. Trout, Mr. Bates, all for a stunning little trial moment over in the city court when he pulled out the stipulation or pulled out the statement where I recant and the state prosecutor's case falls out from under her. For that dramatic moment which only comes by keeping it a secret which they're allowed to do, Mr. Lackl is dead. And if he doesn't really see that responsibility, that's fine. But I'm not going to hug the guy. And I hope one of these days he wakes up and realizes his role in the death of Mr. Lackl, all for gamesmanship in a trial.

Did you hear a word, a single word from Mr. Balarezo yesterday about these contacts in March of 2009 between Byers on his, undoubtedly his phone based on the 3000 calls to Keisha Newsome who came in here and told you she spoke only to him. And was there a single word about why Byers was calling Parham? I mean was there? No. And these guys are going there's no records. You have all the

records. There's no other records of any contacts between Byers and Parham. But it just happens that on the day he's supposed to testify and Byers knows when all these things are going to happen. He's a defendant. He knows when we're doing things in court. He gets to come to all of them. We have a defendant or a witness who comes in and tells us I'm not going to testify. On the very day, the first day ever in this whole series of events, Parham finally had to take the stand and he wasn't immunized. Believe me he is not -- I think he could care less. He committed blatant perjury 25 feet away from a federal judge. He could care less. Do what you're going to do. He has to live out there as he said. And Mr. Byers reminded him of that. I'm quite sure he didn't call him and say I'll visit death upon you. All I have to do is reach out and, you know, how you doing, it's me. Yeah, the guy you put in jail for three years by telling on me and now I'm facing the death penalty. How you doing? You don't have to say very much when he knows the guy that caught him is the guy who knows he shot another guy in the stomach and who saw you shoot somebody five times in the head. You don't have to say very much. Hi, it's me, Pat. How did you get my number? And, you know, it was actually really funny almost. If it wasn't so serious, it would have been funny. We're good friends. We're very good friends and I never told the government about this because nobody asked. I mean come on. I would not be a state prosecutor, I'll tell you that, not in Baltimore City because if this is what they deal with, the products of the Trouts and the Bates.

Anyway, there's no Tony. There's no Officer Kevin. And Pearson is not my glue. He's their glue. There's no explanation for these calls and there can only be one explanation for why a person who we know orchestrated a murder did, who was calling the people. He did it before, right before and right after the murder. You can't see that there's nothing more that I can say or do. No more evidence we can find. There isn't any more evidence. We know our burden and we know about our burden. Our burden, our burden. Yeah, we know that. We know who hears our cases. We know it doesn't get presented to an audience or to one of the lawyers. We know it goes to a jury who doesn't know anything about the investigation and wasn't with us when we went to the grand jury or interviewed witnesses or any of this stuff. We have to put on basically a play of our case for this audience called the jury and hope that they see it, desperately hope that they see it because this is the only chance that we get to present it. And it's important for so many reasons for the justice system to put an end to this reign of bloody terror that this man has inflicted on east Baltimore, you know, Montford Street. It's got to end. And you know, I can't end it. And the Lackl family and the investigators, we all have a sense of what we know. We've studied these records. You may hear a person talk about them momentarily and you heard somebody say something yesterday about pressure. Well, there is no pressure. We took our time putting this case together. We took our time putting it in front of you and we want you to take your time considering it because it's important and it's the only shot

we're going to get presenting this to you and the only shot there will be for justice. And our system, unlike their system, their system is you're telling, we kill you. Do you think Byers and Goodman said let's talk about the case, Frank? Well, we have this witness here. We might be able to get him to withdraw or he's going to recant. Excellent thinking. And this witness here, well, we know he has a drug problem. Maybe we can impeach his credibility with that. And in fact we have this witness over here who they present an array to. We can suggest that perhaps that person would never identify me. Excellent thinking, Patrick. We'll do that. Let's go. You'll be out in no time. No. It's like that guy is telling. He saw me. I know he saw me because he looked me right in the eye. He knows me, man, and he saw me throw the gun. They don't really give it a lot of thought because they didn't hear it. They called this guy. They knew who would do it. Not for $2300. He called a kid who he know would do it for nothing. A Blood. And that's the only Blood component in this case incidentally, ladies and gentlemen. For all the Blood M.O.B., Member of Bloods? What is this, like a fashion line or something? Everybody knows that's Money Over Bitches. Come on. The only Blood aspect here -- I heard Mr. Purpura laughing. The only Blood aspect is that Pearson was a Blood and he had to find somebody to do his dirty work for him. He wanted to get $2300. So he called an idiot he know would do it. A kid, an impressional kid who wanted to impress a person like Pearson and that is the state of our society which we cannot address in this courtroom. We can't fix that. That's the way

it is. All we can address is this particular manifestation of that problem. But that's what he did. And that's the only Blood component here. This Blood exploited his bloodness to get some baby gangster to go out and kill somebody and it has nothing to do, other than that, nothing to do with Bloods or anything else and nothing to do with tattoos. I mean we're happy to hear that's where the defense goes. They're talking about tattoos. That's great because it means they have nothing else to talk about. It's a specter of the defense. A real defense, a real core defense, a real fight, a real struggle for us would have been explaining these calls. And there wasn't. There was no mention of them. Explain that piece of paper in Mr. Byers' paperwork. It wasn't even mentioned.

A word on the law I was asked to mention. There's a 924(c) count. It's Count 8, Count 9 of the indictment. It's based on the conduct of Mr. Byers on March 4, 2006, the day he murdered Mr. Haynes. Just to be clear, the gun that is charged there, it was described as the Sigsauer and you won't be getting a copy of the indictment I'm told. The indictment is incorporated in the instructions. So as you go through your instructions, you'll read about each count. They will have the count right there for you to read or most of it. Not the entire count. Not all of the language necessarily. But that gun is not by the way the hypothetical gun that was referred to by Mr. Byers that he told Officer Kevin about. The gun that's described in that count is the gun used to kill Mr. Haynes. That Mr. Lackl who's not here to testify, but has testified before in a manner of speaking

through this tape, that's the gun he saw Mr. Byers throw just to be clear. That 924(c) count. And how is it connected with drug trafficking? Well, we didn't have to produce any evidence of that because Mr. Byers provided that. He told us he was a drug trafficker on that corner. That he sold heroin. In his statement and he had the convenience of having his father corroborate that a couple of different ways and it was corroborated by other witnesses. I think one of the, I forget the young man the defense brought in who had contact with, Mr. Byers had contact with the brother who also acknowledged Mr. Byers to be a drug trafficker in this area.

It's a count really that I'll tell you why it's in the indictment. Remember the witness intimidation count? The idea that the witness intimidation of Mr. Lackl, the murder of Mr. Lackl who was a potential federal witness. There were no federal charges at that time. But the two federal charges that actually did exist at that time when we saw Byers run down the street are Counts 8 and 9. Felony possession on March 4th and possession of a firearm in relation to drug trafficking. Those two counts, 8 and 9, are potential, no longer potential counts which Mr. Lackl could have been a witness. And they're basically brought and essentially, well, he's a witness to those counts. I'm going to talk about them.

Now I'm not going to get into Mr. Coleman because I think he speaks for himself except to say this. Mr. Balarezo made a lot of gestures and remarks about the Coleman case. The thrust of which was what's it mean anyway. What's it in there for? Well, the judge will

tell you. There are issues in every case, things that you're allowed to consider. Elements they're called. Some you have to consider. And the identity of a person whether they possess a firearm or not and their intent are elements that you may consider and they're elements of the crimes that are charged and this other event, other act by Mr. Coleman is included to allow you to consider whether in the counts that you have in the indictment whether Mr. Lackl's identification was right because here's Mr. Lackl is saying I saw this guy on Montford Avenue, that guy right there with a gun in 2006. Now Mr. Coleman will say hey, I saw the same guy with a gun on that block in 2004 and I remember him because he was putting that gun into my stomach when he shot me. Yeah. That guy right there. That's why it's permitted. It's not a charged count. It's there to assist you to evaluate Mr. Lackl's identification of a person doing similar conduct in that area later on also with a gun. Mr. Coleman's shooting is otherwise not charged here. It's there for your consideration in that aspect of the case.

And I grant to you that his testimony, he's not going to forget Mr. Byers. So remember there was a, he even saw this guy, whatever his name was, walking away on his phone, comes back and now he's with Byers, who's now just minutes out of traffic court. That's not an alibi. That's just where he was before he shot Mr. Coleman. And they actually had the audacity to point out that in the picture of Mr. Byers, he actually has four braids, not two. But Mr. Coleman when he saw the very same picture, I asked him how many braids he saw, he

said two. And I thought really an interesting aspect of his testimony, we've heard all about his height. This guy is 5'2, this guy is 5'8. Play a game back there where you all know your own heights and you have other people guess and you see how wildly inaccurate they are. But it was almost a sweet moment when counsel asked if he had described Mr. Byers to be 5'2. Somebody, Mr. Purpura I guess. I'm not sure who it was. One of them said and how tall are you and Mr. Coleman said I'm a pretty big guy. He said I'm 5'2. That's pretty funny. But it just shows how people just don't necessarily have a really accurate sense even of their own height. You know, I'm 6'3. So some people, you know, take that perspective.

The state of mind of Patrick Byers on July 2, 2007 is clear as crystal. He was desperately anxious to kill the only thing that kept him in jail at that point. It didn't work. And now it's time for you to do something about it. And I will just ask you to consider the evidence. Consider Pearson's real role in this case and his real value to me -- his value to them is far, far, far more than it is to me. I'll keep his phone if you don't mind, but they can have Pearson.

Now finally, it's time for you to get to the really most exciting and important part of the case and that is where Judge Bennett gets to read you the jury instructions and the only reason they allow the judge to do that because if anybody else did it, we'd be run out of the courtroom because we can't do that if you're not a federal judge. I'm going to sit down because you've heard so much more of me than you needed to ever hear. But I think you understand

how important this is and how important it is to the Lackl family who have been here every day for you to consider the evidence with as much time as you need, as much deliberation that you need. But just focus on the evidence. Somebody said at the beginning, keep your eye on the ball and then he took the ball and hid it behind the clock. Well, this is the ball. These records, the testimony of Mr. Cornish and Ms. Graham, the record of the contacts which have not been explained and can't be explained and the very fact of Mr. Lackl's murder. And these circumstances lead to the unavoidable conclusion as to who is responsible. If you can find somebody else that's responsible, just let me know because there is nobody else. These two individuals did it. Everybody knows it and now you know it. Us knowing about it means nothing. Only you can do something about it and that's what we're asking you to do. Thank you very much.

THE COURT: Thank you, Mr. Purcell. All right. Ladies and gentlemen, now comes time for the process to which Mr. Purcell just made reference and I will tell you that one juror one time after -- I've discussed cases with jurors at the end of deliberations in all my cases and I will tell you that, I'll repeat that one of the jurors one time said, Judge Bennett, no disrespect, but the instructions, the jury instructions, the reading of them is mind numbing was the phrase that she used. Was mind numbing. And I've still thought of that and I've known that when I was a trial lawyer. I knew it was mind numbing. But it was still somewhat of a blur to the ego here to hear that. But it's very important.

What I'm going to do is I'm going to read a portion of these jury instructions to you and then we're going to take a break because I have heard from jurors before that they found that was helpful. But all these instructions are important and they have found it was helpful to take a break in the middle and it will come about the right time, too. So we're going to go through this for a while and then we'll take a break in the middle of these jury instructions and then we'll continue after the morning break. And you will get a copy of everything from which I am reading. So you certainly are welcome to take notes, but you don't need to take notes verbatim in terms of what I'm reading because you will get a copy as I say of everything that I read now.

You are about to enter your final duty which is to decide the fact issues in this case. Before you do that, I will instruct you on the law. You must pay close attention to me now. I will go as slowly as I can and be as clear as possible. I told you at the very start of the trial that your principal function during the taking of testimony would be to listen carefully and observe each witness who testifies. It has been obvious to me and to counsel that you have faithfully discharged this duty. Your interest never flagged and it is evident that you followed the testimony with close attention. And I know I thank, I speak for all the lawyers and the parties in the case when I thank you for that because this is obviously a very important case. I ask that you give that same careful attention to me now as I instruct you on the law.

You have now heard all the evidence in the case and you have heard the final arguments of the lawyers for the parties. My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow. You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not, any of you, be concerned about the wisdom of any rule of law that I state. Regardless of any opinion that you may have as to what the law may be or ought to be, it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you. Your final role is to pass upon and decide the factual issues that are in the case.

You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony and you draw whatever reasonable inferences you decide to draw from the facts as you have determined them. I shall later discuss with you how to pass upon the

credibility or believability of the witnesses.

In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements on March the 23rd, in their closing arguments yesterday and today, in their objections or in their questions is not evidence. In this connection, you should bear in mind that a question put to a witness is never evidence. It is only the answer which is evidence. Nor is anything I may have said during the trial or may say during these instructions with respect to a factual matter to be taken in substitution for your own independent recollection. What I say is not evidence.

The evidence before you consists of the answers given by the witnesses, the testimony they gave as you recall it and the exhibits that were received in evidence. It also includes a few stipulations as well. The evidence does not include questions. Only the answers are evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers.

You may also consider the stipulations of the parties as evidence. Since you are the sole and exclusive judges of the facts, I do not need to indicate any opinion as to the facts of what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be as to whether or not the guilt of the defendants has been proven beyond a reasonable doubt. As to the facts, ladies and gentlemen, you are the

exclusive judges. You are to perform the duty of finding the facts without bias or prejudice as to any party.

In determining the facts, the jury is reminded that before each member was accepted and sworn to act as a juror, he or she was asked questions concerning competency, qualifications and fairness and freedom from prejudice and bias and indeed in this case as you all know, you all were individually called here into this courtroom and individually questioned. On the faith of those answers, the juror was accepted by the parties. Therefore, those answers are binding on each of the jurors now as they were then and should remain so until the jury is discharged from consideration of this case.

You are to perform the duty of finding the facts without bias or prejudice as to any party. You're to perform your final duty in an attitude of complete fairness and impartiality. This case is important to the government for the enforcement of criminal laws is a matter of prime concern to this community. Equally, it is important to each of the two defendants who are charged with serious crimes. The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, the government is entitled to no less consideration. All parties whether government or individuals stand as equals at the bar of justice.

It is the duty of the attorneys for each side of the case to object when the other side offers testimony or other evidence which

the attorney believes is not properly admissible. Counsel also have the right and duty to ask the Court to make rulings of law and to request conferences at the bench out of the hearing of the jury. All those questions of law must be decided by me, the Court. You should not show any prejudice against an attorney or his or her client because the attorney objected to the admissibility of evidence or asked for a conference out of the hearing of the jury or asked the Court for a ruling on the law. As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence. Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper for you to consider in reaching your decision as to whether the government sustained its burden of proof any personal feelings you may have about a defendant's race, religion, national origin, sex or age. All persons are entitled to the presumption of innocence and the government has the burden of proof as I will discuss in a moment. It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. To repeat, your verdict must be based exclusively upon the evidence or the lack of evidence in the case.

Under your oaths as jurors, you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case and the crucial hardcore question that you must ask yourselves as you

sift through the evidence is has the government proven the guilt of each defendant beyond a reasonable doubt. It is for you alone to decide whether the government has proven that each defendant is guilty of the crimes charged solely on the basis of the evidence and subject to the law as I charge you this morning. It must be clear to you that once you let fear or prejudice or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict. If you have a reasonable doubt as to a defendant's guilt, you should not hesitate for any reason to find a verdict of acquittal.

But on the other hand, if you should find that the government has met its burden of proving a defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

You're about to be asked to decide whether or not the government has proven beyond a reasonable doubt the guilt of each of the two defendants. You are not being asked whether any other person has been proven guilty. Your verdict should be based solely upon the evidence or lack of evidence as to each defendant in accordance with my instructions and without regard to whether the guilt of other people has or has not been proven.

Although the defendants have been indicted, you must remember that an indictment is only an accusation. It is not evidence. Each defendant has pleaded not guilty to that indictment. As the result of each defendant's plea of not guilty, the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden

never shifts to the defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence. The law presumes a defendant to be innocent of all the charges against him. I therefore instruct you that each defendant is presumed by you to be innocent throughout your deliberations until such time if ever you as a jury are satisfied that the government has proven him guilty beyond a reasonable doubt. Each defendant begins the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit a defendant unless you as jurors are unanimously convinced beyond a reasonable doubt of his guilt after a careful and impartial consideration of all of the evidence in this case. If the government fails to sustain its burden, you must find the defendant not guilty. This presumption was with each defendant when the trial began and remains with each even now as I speak to you and will continue with the defendants into your deliberations unless and until you are convinced that the government has proven each defendant's guilt beyond a reasonable doubt.

The superseding indictment contains a total of nine counts. Each count charges the defendants with a different crime. There are two defendants on trial before you. You must as a matter of law consider each count of the superseding indictment and each defendant's involvement in that count separately and you must return a separate verdict on each defendant for each count in which he is charged.

In reaching your verdict, bear in mind that guilt is

personal and individual. Your verdict of guilty or not guilty must be based solely upon the evidence about each defendant. The case against each defendant on each count stands or falls upon the proof or lack of proof against that defendant alone. And your verdict as to any defendant on any count should not control your decision as to any other defendant or any other count. No other considerations are proper.

While we're on the subject of the indictment, I should draw your attention to the fact that the superseding indictment charges that specific acts and offenses occurred on or about certain dates. The proof need not establish with any certainty the exact date of the specific acts or offenses. It is sufficient if the evidence in this case establishes that the offenses were committed on dates reasonably near the dates alleged in the superseding indictment. The law only requires a substantial similarity between the dates alleged in the superseding indictment and the dates established by testimony or exhibits.

During the trial, you may have heard testimony of witnesses and argument by counsel that the government did not utilize specific investigative techniques. For example, some seized items may not have been submitted for fingerprint analysis and chemical analysis may not have been done on every item seized. You may consider these facts in deciding whether the government has met its burden of proof because as I told you, you should look to all the evidence or lack of evidence in deciding whether a defendant is guilty. However, you are also

instructed that there is no legal requirement that the government use any of these specific investigative techniques to prove its case. For example, there is no requirement to attempt to take fingerprints or that the government offer fingerprints in evidence. Law enforcement techniques are not your concern. Your concern as I have said is to determine whether or not on the evidence or lack of evidence each defendant's guilt has been proved beyond a reasonable doubt. Moreover, the law does not require the prosecution to call as witnesses all persons who have been present at any time or place involved in the case or who may appear to have some knowledge of the matters at issue in this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in evidence.

As I mentioned to you back on March the 23rd at the beginning of the testimony in this case, there are two types of evidence, direct and circumstantial evidence. These two types of evidence which you may properly use in deciding whether a defendant is guilty or not guilty. One type of evidence is called direct evidence. Direct evidence is where a witness testifies to what he saw, heard or observed. In other words, when a witness testifies about what is known to him of his own knowledge by virtue of his own senses. What he sees, feels, touches or hears. That is called direct evidence. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. There is a simple example of circumstantial evidence which is often used in this courthouse and I

think I used it or something to this effect back on March the 23rd. Assume that when you came into the courthouse this morning, that the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella which was dripping wet. Somebody else then walked in with a raincoat which was also dripping wet. Now you cannot look outside of the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of the fact. But on the combinations of fact which I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining. That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from an established fact the existence or the nonexistence of some other fact. Circumstantial evidence is of no less value than direct evidence. For it is a general rule that the law makes no distinction between direct and circumstantial evidence. It simply requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Let me emphasize that a lawyer's question is not evidence. At times, a lawyer on cross-examination may have incorporated into a question a statement which assumes certain facts to be true and asked the witness if the statement was true. If the witness denies the truth of the statement and if there is no evidence in the record proving that the assumed fact is true, then you may not consider the

fact to be true simply because it was contained in the lawyer's question. A well-known example of this is a lawyer's question of a witness, when did you stop cheating on your taxes. You would not be permitted to consider as true the assumed fact that the witness ever cheated on his taxes unless the witness himself indicated that he had, that he had unless there was some other evidence in the record that he had cheated on his taxes. In short, questions are not evidence. Answers are.

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits received in evidence and stipulations. Exhibits which have been marked for identification, but not received may not be considered by you in evidence and there are a few of those. Most of the exhibits are in evidence, but there were a few that were marked only for identification. Only those exhibits received into evidence may be considered as evidence. Similarly, you are to disregard any testimony when I have ordered it to be stricken. As I indicated before, only the witness' answers are evidence and you are not to consider a question as evidence. Similarly, statements by counsel are not evidence. You should consider the evidence in light of your own common sense and experience. And you may draw reasonable inferences from the evidence. Anything you may have seen or heard outside this case, outside the courtroom is not evidence. It must be entirely disregarded.

I mentioned stipulations. A stipulation is an agreement among the parties that a certain fact is true. You may regard such

agreed facts as true and I believe any stipulations were not only read to you, but are marked as exhibits and will go back in the jury room.

You have also heard testimony in this case regarding evidence seized by the government during the execution of search warrants. You are hereby instructed that it is the responsibility of the Court alone to determine the validity and legality of those search warrants and other seizures. And the Court has determined that the seizures in this case were valid and legal. It is up to you to decide what significance if any the evidence seized may have in this case.

The government and the defense have shown you certain summary charts which were marked as exhibits which were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based and are not themselves independent evidence. Therefore, you are to give no greater consideration to these charts or summaries than you would give to the evidence upon which they are based. It is for you to decide whether such exhibits correctly present the information contained in the testimony and in the exhibits on which they are based. You are entitled to consider the charts and summaries if you find they are of assistance to you in analyzing the evidence and understanding the evidence.

The defendants did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any other evidence because it is the prosecution's burden to prove a

defendant guilty beyond a reasonable doubt. That burden remains with the prosecution throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is innocent. You may not attach any significance to the fact that a defendant did not testify. No adverse inference against a defendant may be drawn by you because he did not take the witness stand. You may not consider this against a defendant in any way in your deliberations in the jury room.

During the trial you have heard the attorneys use the term inference and in their arguments yesterday and today they may ask you to infer on the basis of reason, experience and common sense from one or more established facts the existence of some other fact. An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

There are times when different inferences may be drawn from facts whether proved by direct or circumstantial evidence. The government asked you to draw one set of inferences while the defense asks you to draw another. It is for you and you alone to decide what inferences you will draw. The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion which you, the jury, are permitted to draw, but not required to draw from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense. So while

you are considering the evidence presented to you, you are permitted to draw from the facts which you find to be proven such reasonable inferences as would be justified in light of your experience. Here again let me remind you that whether based upon direct or circumstantial evidence or upon the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of a defendant beyond a reasonable doubt before you convict that defendant.

You have had an opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony. It must be clear to you by now that you are being called upon to resolve various factual issues under the superseding indictment in the face of the very different pictures painted by the government and the defense. You will now have to decide where the truth lies and an important part of that decision will involve making judgments about the testimony of the witnesses you have listened to and observed. In making those judgments, you should carefully scrutinize all the testimony of each witness, the circumstances under which each witness testified and any other matter in evidence which may help you to decide the truth and the importance of each witness' testimony. Your decision whether to believe, whether or not to believe a witness may depend upon how that witness impressed you. Was the witness candid, frank and forthright or did the witness seem as if he or she was hiding something, being evasive or suspect in some way? How did the way the witness testified

on direct examination compare with the way the witness testified on cross-examination? Was the witness consistent in his or her testimony or did he or she contradict himself or herself? Did the witness appear to know what he or she was talking about and did the witness strike you as someone who is trying to report his or her knowledge accurately? How much you choose to believe a witness may be influenced by the witness' bias? Does the witness have a relationship with the government or the defendant which may affect how he or she testified? Does the witness have some incentive, loyalty or motive that might cause him or her to shade the truth or does the witness have some bias, prejudice or hostility that may have caused the witness consciously or not to give you something other than a completely accurate account of the facts he or she testified to? Even if the witness was impartial, you should consider whether the witness had an opportunity to observe the facts he or she testified about and you should also consider the witness' ability to express himself or herself. Ask yourselves whether the witness' recollection of the facts stands up in the light of all other evidence. In other words, what you must try to do in deciding credibility is to size a person up in light of his or her demeanor, the explanations given and in light of all the other evidence in this case just as you would in any important matter where you are trying to decide if a person is truthful, straightforward and accurate in his or her recollection.

In deciding the question of credibility, remember that you should use your common sense, your good judgment and your experience.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. An innocent misrecollection like a failure of recollection is not an uncommon experience. In weighing the effect of a discrepancy, always ask yourself whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from an innocent error or intentional falsehood.

Throughout the trial, you have heard witnesses testify to facts they failed to mention or omitted in prior summaries. You may consider such prior omissions as inconsistent statements when deciding the credibility of a witness. In deciding what effect to give the omission, you should consider whether the omitted fact is an important or unimportant detail and whether it is the type of matter one would normally expect another to remember when asked about an event. You should also consider any explanation offered by the witness to explain the omission and consider the explanation the same as you would any other aspect of a witness' testimony.

You should also consider whether the witness had a full and complete opportunity to explain everything on the earlier occasion. An omission from a statement like any inconsistency of testimony may result from an innocent failure of recollection or deliberate falsehood. If you find that a witness has testified willfully and falsely with regard to any matter of trial, you may choose to reject

any part or all of said witness' testimony. After making your own judgment, you should give the testimony of each witness such credibility as you think it is fairly entitled to receive if any.

In connection with your evaluation of the credibility of the witnesses, you should specifically consider evidence of resentment or anger which some government witnesses may have towards a defendant. Evidence that a witness is biased, prejudiced or hostile towards a defendant requires you to view that witness' testimony with caution, to weigh it with care and subject it to close and searching scrutiny.

You have heard witnesses who've testified that they were actually involved in planning and carrying out the crimes charged in the indictment. There has been a great deal said about these so-called accomplice witnesses in the summations of counsel and whether or not you should believe them. The government argues as it is permitted to do that it must take the witnesses as it finds them. It argues that only people who themselves take part in criminal activity have the knowledge required to show criminal behavior by others. For these very reasons, the law allows the use of accomplice testimony. Indeed, it is the law in federal court that the testimony of accomplices may be enough in itself for conviction if the jury finds that the testimony establishes guilt beyond a reasonable doubt. However, it is also the case that accomplice testimony is of such nature that it must be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

I have given you some general considerations on credibility and I will not repeat all of them here. Nor will I repeat all of the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices. You should ask yourselves whether these so-called accomplices would benefit more by lying or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by testifying falsely or did they believe that their interest would be best served by testifying truthfully? If you believe that the witness was motivated by the hopes of personal gain, was the motivation one which would cause him to lie or was it one which would cause him to tell the truth? Did this motivation color his testimony? In sum, you should look at all the evidence in deciding what credence and what weight if any you will give to accomplice witnesses?

You have heard the testimony of a witness more than one I believe who has testified under a grant of immunity from this court. What this means is that the testimony of a witness may not be used against him in any criminal case except a prosecution for perjury, giving a false statement or otherwise failing to comply with the immunity order of this court. You are instructed that the government is entitled to call as a witness a person who has been granted immunity by order of this court and that you may convict a defendant on the basis of such witness testimony alone if you find that the testimony proved the defendants guilty beyond a reasonable doubt.

However, the testimony of a witness who's been granted immunity should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in such a way as to place guilt upon the defendant in order to further the witness' own interest. For such a witness confronted with the realization that he can win his own freedom by helping to convict another has a motive to falsify his testimony. Such testimony should be scrutinized by you with great care and you should act upon it with caution. If you believe it to be true and determine to accept the testimony, you may give it such weight if any as you believe it deserves.

There has been evidence introduced at the trial that the government or the defendant called a witness as a person who was using or addicted to drugs when the evidence he observed took place or who is now using drugs. I instruct you that there is nothing improper about calling such a witness to testify about events within his personal knowledge. On the other hand, his testimony must be examined with greater scrutiny than the testimony of any other witness. The testimony of a witness who was using drugs at the time of the events he's testifying about or who's using drugs at the time of his testimony may be less believable because of the effect the drugs may have on his ability to perceive or relate the events in question. If you decide to accept his testimony after considering it in light of all the evidence in this case, then you may give it whatever weight if any you find it deserves.

In this case, there has been testimony from a government witness who pled guilty after entering into an agreement with the government to testify. There is evidence that the government agreed to dismiss some charges against the witness and agreed not to prosecute him on any other charges in exchange for the witness' agreement to plead guilty and testify at this trial against one of the defendants. The government has also promised to bring the witness' cooperation to the attention of the sentencing court. The government is permitted to enter into this kind of plea agreement. You in turn may accept the testimony of such a witness and convict a defendant on the basis of this testimony alone if it convinces you of a defendant's guilt beyond a reasonable doubt. However, you should bear in mind that a witness who has entered into such an agreement has an interest in this case different than any ordinary witness. A witness who realizes that he may be able to obtain his own freedom or receive a lighter sentence by giving testimony favorable to the prosecution has a motive to testify falsely. Therefore, you must examine his testimony with caution and weigh it with great care. If after scrutinizing his testimony, you decide to accept it, you may give it whatever weight if any you find it deserves.

One of the most important issues in this case is the identification of a defendant as the perpetrator of the crime. The government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness himself be free from doubt as to the correctness of his identification of the defendant.

However, you the jury must be satisfied beyond a reasonable doubt of the accuracy of the identification of a defendant before you may convict him. If you are not convinced beyond a reasonable doubt that a defendant was the person who committed the crime, you must find the defendant not guilty.

Identification testimony is an expression of belief on the part of the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and later to make a reliable identification of the offender. You have heard arguments of counsel on this subject and I will not repeat all of them here. I will only suggest to you that you should consider the following matters. Did the witness have the ability to see the offender at the time of the offense? Has the witness' identification of a defendant as the offender been influenced in any way? Has his identification been unfairly suggested by events that occurred since the time of the arrest. Is his recollection accurate? In addition, you should consider the credibility of the identification witness just as you would any other witness. Let me repeat. The burden is on the prosecution to prove every element of the crime charged including the identity of the defendant as the offender. Therefore, if after examining all of the evidence, you find that the crime was committed, but you have a reasonable doubt about whether it was a defendant who committed the crime, you must find him not guilty.

In evaluating the credibility of the witnesses, you should take into account any evidence that the witness who testified may

benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interest. Therefore, if you find that any witness whose testimony you're considering may have an interest in the outcome of this trial, then you should bear that factor in mind in evaluating the credibility of his or her testimony and accept it with great care. This is not to suggest that every witness who has an interest in the outcome of the case will testify falsely. It is for you to decide to what extent if at all the witness' interest has affected or colored his or her testimony. And we're going to stop in a minute for your break. Just a few more minutes.

You have heard the testimony of some witnesses who were previously convicted of crimes punishable by more than one year in jail. These prior convictions were placed into evidence for you to consider in evaluating the witness' credibility. You may consider the fact that the witness who testified is a convicted felon in deciding how much of his testimony to accept and what weight if any it should be given.

You have heard evidence that a witness made a statement on an earlier occasion which counsel may argue is inconsistent with the witness' trial testimony. Evidence of the prior inconsistent statement was placed before you for the limited purpose of helping you decide whether to believe the trial testimony of the witness. If you find that the witness made an earlier statement that conflicts with

his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony if any to believe. In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake, whether the inconsistency concerns an important fact or whether it had to do with a small detail, whether the witness had an explanation for the consistency and whether that explanation appealed to your common sense. It is exclusively your duty based upon all evidence and your own good judgment to determine whether the prior statement was inconsistent and if so, how much if any weight to be given to the inconsistent statement in determining whether to believe all or part of the witness' testimony.

You have heard the testimony of many law enforcement officials. The fact that a witness may be employed by the federal government or a state or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of any ordinary witness. At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case. It is your decision after reviewing all the evidence whether to accept the testimony of a law enforcement witness and to give that testimony whatever weight if any you find it deserves.

You have heard testimony from certain persons who were

qualified as expert witnesses and at the time I explained to you the process. Specifically, the government has introduced the following experts: Michael Thomas, firearms examiner, James Wagster, firearms examiner, Jack Titus, medical examiner and Jocelyn Carlson, DNA forensic specialist. In addition, the Defendant Goodman has introduced David Snavely as a wireless communications expert. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts. In weighing the expert testimony, you may consider the expert's qualifications, his or her opinion, his or her reasons for testifying as well as all the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony. You may give the expert testimony whatever weight if any you find it deserves in light of all the evidence in this case. You should not, however, accept the witness' testimony merely because he or she is an expert nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

There has been evidence that the defendants made certain post-arrest statements. In deciding what weight to give to those statements of the defendants, you should first examine with great care whether each statement was made or whether it was in fact and whether in fact it was voluntarily and understandably made. I instruct you

that you are to give the statements such weight as you feel they deserve in light of all the evidence.

The government has offered evidence tending to show that on a different occasion, the defendant, Patrick A. Byers, Jr., engaged in conduct similar to the charges in the indictment. Specifically, you have heard testimony that Patrick Byers shot Carlyle Coleman in May of 2004. In that connection let me remind you that Patrick Byers is not on trial for committing this alleged prior bad act and he is not charged with the shooting of Mr. Coleman. Accordingly, you may not consider the evidence of this alleged act as a substitute for proof that the defendant committed a crime charged in the indictment. Nor may you consider this evidence as proof that the Defendant Byers is a criminal personality or bad character. This evidence was admitted for limited purposes and you may consider this evidence only for the purpose of deciding intent, possession and identity. If you find that the Defendant Byers did engage in that other conduct and if you find that the other conduct has sufficiently similar characteristics to that charged in the indictment, then you may, but you need not infer that the Defendant Byers was the person who committed the acts charged in the relevant counts of the indictment. That is you may consider the prior act evidence as evidence of intent, possession and identity.

You have heard evidence that the Defendant Byers may not have been present at the time and the place where the Coleman shooting occurred in May of 2004. Of course, it is for you to determine whether you believe this evidence and if you do believe it, whether

you accept it for the purpose offered. You may give it such weight as you feel it deserves, but only for the limited purpose that I described to you. The defendant is not on trial for committing the Coleman shooting. You may not consider the evidence of the Coleman shooting as a substitute for proof that the defendant committed the crimes charged. You may not consider this evidence as proof that the defendant has a bad character or any propensity to commit crimes. Specifically, you may not use this evidence to conclude that because the defendant may have committed the Coleman shooting, he must also have committed the Haynes shooting or been involved in the Lackl murder.

You have heard evidence regarding the murder of Larry Haynes on March 4, 2006. The defendants are not charged with this murder. However, as to Counts 1 through 7, evidence of that murder and the related state charges that were brought against Mr. Byers for that murder may be considered for the limited purpose of establishing Byers' motive for the murder of Mr. Lackl as charged in Counts 1 through 7. As to Counts 8 and 9, any evidence that has been presented in relation to the murder of Larry Haynes on March 4, 2006 may be considered as you would consider any other evidence in this case as to the charges specified in Counts 8 and 9 of the superseding indictment.

You have heard testimony that a defendant made certain statements outside the courtroom to law enforcement authorities in which the defendant claims that his conduct was consistent with innocence and not with guilt. The government claims these statements

in which he exonerated or exculpated himself were false. If you find that a defendant gave a false statement in order to divert suspicion from himself, you may, but are not required to infer that the defendant believed that he was guilty. You may not however infer on the basis of this alone that the defendant is in fact guilty of the crimes which he is charged. Whether or not the evidence as to a defendant's statement shows that the defendant believed he was guilty and the significance of any to be attached to any such evidence are matters for you, the jury, to decide.

We will now next consider the crimes which the defendants are charged in the superseding indictment. Each alleged crime is charged in what is called a count. A count may charge more than one defendant. I will next discuss with you the rules of law which govern whether the crime charged has been proven and we will start with that, ladies and gentlemen, after our break. We will now take a ten-minute recess, ten to fifteen-minute recess and then I will continue with the balance of the instructions in this case.

(Recess.)

THE COURT: Counsel, your copy of Instruction Number 34 had said admissions of defendant. I have now changed that. When it goes in the jury room, it will say post-arrest statements of defendants.

MR. PURPURA: Thank you.

(Jury present.)

THE COURT: All right. You may all be seated. Thank you, Ms. West. All right. Now continuing. With respect to aiding and

abetting. The government has alleged the defendants committed the charged offenses as principal actors and except for Count 7 under the aiding and abetting statute. 18 United States Code, Section 2. Under the aiding and abetting statute, it is not necessary for the government to show that a defendant himself physically committed the crime with which he is charged in order for you to find the defendant guilty. A person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself. Accordingly, you may find a defendant guilty of the offense charged if you find beyond a reasonable doubt that the government has proved that another person actually committed the offense with which the defendant is charged and that the defendant aided or abetted that person in the commission of the offense. As you can see, the first requirement is that you find that another person has committed the crime charged. Obviously, no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of the crime. In order to aid or abet another to commit a crime, it is necessary that the defendant willfully and knowingly associate himself in some way with the crime and that he willfully and knowingly seek by some act to help make the crime succeed. Participation in a crime is willful if action is taken voluntarily and intentionally or in the case of a failure to act with the specific intent to fail to do something the law requires to be done. That is to say with a bad

purpose either to disobey or disregard the law. The mere presence of a defendant where a crime is being committed even coupled with knowledge by the defendant that a crime is being committed or the mere acquiescence by a defendant in the criminal conduct of others even with guilty knowledge is not sufficient to establish aiding and abetting.

To determine whether a defendant aided or abetted the commission of the crime with which he is charged, ask yourself these questions. Did he participate in the crime charged as something he wished to bring about? Did he associate himself with the criminal venture knowingly and willfully? Did he seek by his actions to make the criminal venture succeed? If he did, then the defendant is an aider and abettor and therefore, guilty of the offense. If on the other hand, your answers to this series of questions are no, then the defendant is not an aider and abettor and you must find him not guilty. You have been instructed and will be further instructed that in order to sustain its burden of proof, the government must prove the defendant acted knowingly and willfully. A person acts knowingly if he acts intentionally and voluntarily and not because of ignorance, mistake, accident or carelessness. Whether the defendant acted knowingly may be proven by the defendant's conduct and by all the facts and circumstances surrounding the case.

Willfully means to act with knowledge that one's conduct is unlawful and with the intent to do something the law forbids. That is to say with the bad purpose to disobey or to disregard the law. The

defendant's conduct was not willful if it was due to negligence, inadvertence or mistake. In Count 1, the defendants are charged with conspiracy to use a facility of interstate commerce in the commission of a murder for hire. In Count 2, the defendants are charged with the substantive offense of using a facility of interstate commerce in the commission of a murder for hire. Both charges are brought under Title 18, United States Code, Section 1958(a), which makes it a crime to use or cause another to use a facility of interstate commerce with intent that a murder be committed in violation of the laws of any state or the United States as consideration for the receipt of or as consideration for a promise or agreement to pay anything of pecuniary value or to conspire to do so.

Specifically, Count 1 of the superseding indictment. Now you will not get a copy of the indictment, but I summarize the indictment in all of these instructions. So you'll get all of this verbatim in the instructions. Specifically Count 1 of the superseding indictment alleges as follows: From on or about May 18, 2007 until on or about September 5, 2007 in the State and District of Maryland, Patrick Albert Byers, Jr. and Frank Keith Goodman, the defendants herein with each other and others known and unknown to the grand jury, did knowingly and unlawfully combine, conspire and agree to violate 18 United States Code, Section 1958 specifically, to use and cause to be used a facility of interstate commerce, to wit, various means including cellular telephones and telephones of the interstate communication system of the United States with intent that the murder

of Carl Stanley Lackl be committed in violation of the laws of the State of Maryland which resulted in the death of Carl Stanley Lackl as consideration for the receipt of and as consideration for a promise and agreement to pay something of pecuniary value, to wit, a sum of United States currency.

Count 2 of the superseding indictment alleges as follows. From on or about May 18, 2007 until on or about September 5, 2007 in the State and District of Maryland, Patrick Albert Byers, Jr. and Frank Keith Goodman, the defendants herein, did use and cause to be used a facility of interstate commerce, to wit, various means including telephones, cellular phones and direct-connect features of the interstate communication system of the United States as described in Count 1 which is incorporated herein with intent that the murder of Carl Stanley Lackl be committed in violation of the laws of the State of Maryland and which resulted in the death of Carl Stanley Lackl as consideration for the receipt of and as consideration for a promise and agreement to pay something of pecuniary value, to wit, a sum of United States currency to be paid to the defendants.

We will now turn to the elements of these offenses. I will explain the elements for Count 2 first before returning back to Count 1. Count 2. In order to prove this charge against the defendant, the government must establish beyond a reasonable doubt each of the following elements of the crime. First, that a defendant used or caused someone else to use a facility of interstate commerce. Second, that the use of an interstate facility was done with the intent that a

murder be committed or in violation of the laws of any state or the United States. Third, that the murder in question was intended to be committed as consideration for the receipt of anything of value and fourth, that the commission of the offense resulted in the death of Carl Stanley Lackl.

The first element the government must prove beyond a reasonable doubt is that the defendant -- again we're on Count 2 still -- is that the defendant used or caused someone else to use a facility of interstate commerce. A facility of interstate commerce is a vehicle or means of communication that crosses state lines in the course of commerce. You are instructed as a matter of law that the making of a telephone call constitutes the use of a facility of interstate commerce regardless of whether the particular communication which is alleged actually crossed the state line. That is a telephone call between two individuals in the same state qualifies as the use of an interstate facility for purposes of this statute. The telephone call or other use of an interstate facility must have occurred to facilitate, promote, manage, carry out or further the commission of the murder. It need not have been the only reason or even the principal reason for the use of an interstate facility as long as it was one of the reasons for the use of a facility.

The second element with respect to Count 2, the second element the government must prove beyond a reasonable doubt is the use of an interstate facility was done with the intent that a murder be committed in violation of the laws of any state or the United States.

To satisfy this particular element, the government does not have to prove that the murder was actually committed on even that it was attempted. Rather it must prove that the use of an interstate facility was done with the intent to further or facilitate the commission of the murder. You are thus being asked to look into the defendant's mind and ask what was the defendant's purpose in using interstate facilities or causing another to use interstate facilities. You may determine the defendant's intent from all of the evidence that has been placed before you including the statements of the defendants and their conduct before and after the use of the interstate facilities. I instruct you as a matter of law that the murder of Carl Stanley Lackl qualifies as a murder in violation of state or federal law.

The third element that the government must establish beyond a reasonable doubt is that the murder in question was intended to be committed as consideration for the receipt of anything of value. This requires that the government prove that there was a mutual agreement, understanding or promise that something of value would be exchanged for committing the murder. Anything of value means money, negotiable instruments or anything else. The primary significance of which is economic advantage. Finally, the government must prove that the commission of this offense resulted in the death of Carl Stanley Lackl as charged.

Now as to Count 1 -- they were the elements of Count 2. Now back to Count 1, the conspiracy charge with relation to that. Having

instructed you as to Count 2 of the superseding indictment, I'll now turn to Count 1. In order to satisfy its burden of proof as to Count 1, the government must establish beyond a reasonable doubt each of the following two elements: First, that two or more people entered into the unlawful agreement as charged. That is an agreement to use an interstate commerce facility with the intent that a murder be committed in violation of state or federal law, which murder was intended to be committed as consideration for the receipt of anything of value.

Second, that the defendant knowingly and willfully became a member of that conspiracy and third, that the conspiracy resulted in the death of Carl Stanley Lackl. A conspiracy is a kind of criminal partnership, a combination or agreement of two or more persons to join together to accomplish some unlawful purpose. In this case, the lawful purpose alleged to be the object of the conspiracy is the violation of the federal law against using a facility of interstate commerce with the intent to commit a murder for hire. The crime of conspiracy to commit a murder for hire as charged in Count 2 is an independent offense. The conspiracy alleged in Count 1 is the agreement to violate the laws of the United States and it is an entirely distinct and separate offense from the actual violation of the murder for hire law charged in Count 2. The essence of conspiracy is the unlawful combination or agreement to violate the law. The success of the conspiracy or the actual commission of the criminal act that is the object of the conspiracy is not an essential element of

the crime of conspiracy. However in this case, the superseding indictment charges that the conspiracy was in fact successful in that it resulted in the death of Carl Stanley Lackl. Congress has deemed it appropriate to make conspiracy standing alone a separate crime even if the conspiracy is not successful. This is because collective criminal activity poses a greater threat to the public safety and welfare than individual conduct and increases the likelihood of success of a particular criminal venture.

The first element the government must prove beyond a reasonable doubt as to establish the offense of conspiracy as charged in Count 1 is that two or more persons entered the unlawful agreement charged in the superseding indictment which is alleged to be a conspiracy to use interstate communication facilities in the commission of a murder for hire. In order for the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators stated in words or writing what the scheme was, its object or purpose or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the government must prove is that there was a mutual understanding either spoken or unspoken between two or more people to cooperate with each other to accomplish an unlawful act or acts. You may, of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, such conspiracy is by its very nature

characterized by secrecy. You may also infer its existence from the circumstances of this case and the conduct of the parties involved. In a very real sense then in the context of conspiracy cases, actions often speak louder than words. In this regard you may in determining whether an agreement existed here consider the actions and statements of all those you find to be participants as proof that a common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

The second element -- again so now we're on Count 1 still -- that the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that each defendant knowingly, willfully and voluntarily became a member of the conspiracy. If you are satisfied that the conspiracy charged in the indictment existed, you must next ask yourselves who the members of the conspiracy were. In deciding whether each defendant was in fact a member of the conspiracy, you should consider whether each defendant knowingly and willfully joined the conspiracy. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker? In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or its outcome. You are instructed that while proof of a financial interest in the outcome of a scheme is not essential. If you find that the defendant had such an interest, that is a factor which you may properly consider in determining whether or not the

defendant was a member of the conspiracy charged in the superseding indictment. As I mentioned a moment ago, before a defendant can be found to have been a conspirator, you must find that he knowingly joined in the unlawful agreement or plan. The key question therefore is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement. It is important for you to note that a defendant's participation in the conspiracy may be established by independent evidence of his own acts or statements as well as those of alleged co-conspirators and the reasonable inferences which may be drawn from them. Like the conspirator's agreement, a defendant's participation in the conspiracy need not be explicit. It may be inferred from circumstantial evidence. A defendant's knowledge is a matter of inference from the facts proved. In that connection I instruct you that to become a member of the conspiracy, a defendant need not have known the identities of each and every member nor need he have been aware of all their activities. Moreover, a defendant need not have been fully informed as to all the details or the scope of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, a defendant need not have joined in all the conspiracy's unlawful objectives. The extent of a defendant's participation has no bearing on the issue of the defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles while

others play minor roles in the scheme. An equal role is not what the law requires. A defendant's connection to the conspiracy can be slight. In fact even a single act may be sufficient to draw a defendant within the ambit of the conspiracy and only a slight connection need be shown linking a particular defendant to the conspiracy to support a finding that a defendant was a member of the conspiracy. The government must prove the connection however slight beyond a reasonable doubt. Thus, a defendant may be convicted of conspiracy without full knowledge of all of the conspiracy's details if he joins the conspiracy with an understanding of the unlawful nature thereof and willfully joins in the plan on at least one occasion even though he may not have participated before, might not participate again and played only a minor role. I want to caution you however that a defendant's mere presence at the scene of the alleged crime does not by itself make him a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy by itself does not automatically make the defendant a member. A person may know or be friendly with a criminal without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, although those factors may be considered by you in determining the existence of a conspiracy.

I also want to caution you that mere knowledge or acquiescence without participation in the unlawful plan is not

sufficient. Moreover, the fact that the acts of a defendant without knowledge merely happened to further the purposes or objectives of the conspiracy does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated in some way however slight with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful end.

In sum, before you may find a defendant guilty of conspiracy, the government must have proved beyond a reasonable doubt that each defendant with an understanding of the unlawful character of the conspiracy must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal act undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement. That is to say, a conspiracy. Finally, the government must prove the commission of the offense resulted in the death of Carl Stanley Lackl and they are the elements of Counts 1 and 2 that I've just summarized.

Now onto Counts 3 and 4. In Count 3, the defendants are charged with conspiracy to kill another person with intent to prevent his communication to a law enforcement officer or judge of the United States related to the commission of or possible commission of a federal crime. In Count 4, the defendants are charged with the substantive offense of killing another person with intent to prevent his communication to a law enforcement officer or judge of the United States related to the commission or possible commission of a federal

offense. Both charges are brought under Title 18, United States Code, Section 1512(a)(1)(c), which makes it a crime to kill another person with intent to prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a federal offense or a violation of conditions of probation, parole or release pending judicial proceedings or to conspire to do so.

Now specifically, Count 3 of the superseding indictment alleges as follows. From on or about May 18, 2007 until on or about September 5, 2007, in the State and District of Maryland, Patrick Albert Byers, Jr. and Frank Keith Goodman, the defendants herein, with each other and others known and unknown to the grand jury, did knowingly and unlawfully combine, conspire and agree to violate 18 United States Code, Section 1512(a)(1)(c), specifically to kill another person with intent to prevent the communication by Carl Stanley Lackl to a law enforcement officer or judge of the United States relating to the commission or possible commission of a federal offense by defendant, Patrick Albert Byers, Jr., to wit, a firearms violation pursuant to 18, Title 18, United States Code, Section 922(g)(1), a prohibited person in possession of a firearm on March 4, 2006 as set forth in Count 8 of this superseding indictment which is incorporated herein and violation of 18 United States Code, Section 924(c), possession of a firearm in furtherance of a drug trafficking crime on March 4, 2006 as set forth in Count 9 of the superseding indictment, which is incorporated herein, which killing is a murder as

defined in 18 United States Code, Section 1111 in that the defendants with malice aforethought unlawfully killed a human being, Carl Stanley Lackl, willfully, deliberately and maliciously and with premeditation.

Count 4 of the superseding indictment alleges as follows: From on or about July 2, 2007, in the State and District of Maryland, Patrick Albert Byers, Jr. and Frank Keith Goodman, the defendants herein, did knowingly and unlawfully kill another person with intent to prevent the communication by any person to a law enforcement officer of the United States relating to the commission or possible commission of a federal offense by Defendant Patrick Albert Byers, Jr., to wit, a firearms violation pursuant to Title 18, United States Code, Section 922(g)(1), prohibited person in possession of a firearm on March 4, 2006 as set forth in Count 8 of the superseding indictment, which is incorporated herein in violation of Title 18, United States Code, Section 924(c), possession of a firearm in furtherance of a drug trafficking crime on March 4, 2006 as set forth in Count 9 of the superseding indictment, which is incorporated herein, which killing is a murder as defined in 18 United States Code, Section 1111 in that the defendants with malice aforethought unlawfully killed a human being, Carl Stanley Lackl, willfully, deliberately, maliciously and with premeditation.

We will now turn to the elements of these offenses. I will explain the elements for Count 4 first before turning to Count 3. Count 4, Elements of the Offense. In order to prove a defendant guilty of Count 4, the government must prove each of the following

elements beyond a reasonable doubt. First, that on or about the date charged, the defendant killed another person or aided and abetted the killing of another person. Second, that the defendant acted knowingly and with intent to prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a federal offense. Third, that the killing is a murder as defined in 18 United States Code, Section 1111 in that the defendant with malice aforethought unlawfully killed a human being, Carl Stanley Lackl, willfully, deliberately, maliciously and with premeditation.

The first element the government must prove beyond a reasonable doubt is that the defendant killed another person or that the defendant aided and abetted the killing of another person.

The second element the government must prove beyond a reasonable doubt is that the defendant acted knowingly and with the specific intent to prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a federal offense. That is possession of a firearm by a convicted felon and possession of a firearm in furtherance of drug trafficking as charged in Counts 8 and 9 of the superseding indictment. An act is done knowingly if it is done voluntarily and purposely and not by accident or mistake. By specific intent I mean that the defendant must have acted knowingly and with the unlawful intent to hinder, delay or prevent the communication to a law enforcement officer or judge. In

order to satisfy this element, it is not necessary for the government to prove that the defendant knew he was breaking any particular criminal law. Nor need the government prove that the defendant knew that the judge is a United States judge or a law enforcement officer, is a federal law enforcement officer. Also I instruct you that being a felon in possession of a firearm and possession of a firearm in furtherance of a drug trafficking crime is charged in Counts 8 and 9 are federal offenses. Again, however it is not necessary for the government to prove that the defendant knew that being a prohibited person in possession of a firearm and possession of a firearm in furtherance of a drug trafficking crime is a federal offense.

The law does not require that a federal proceeding be pending at the time or even that it was about to be initiated when the attempted action, threat, intimidation or corrupt persuasion was made. Nor does the law require that the recipient of the intimidation must be involved in an ongoing federal investigation or in an investigation of a federal crime.

Third, the killing is a murder as defined in 18 United States Code, Section 1111 in that the defendants with malice aforethought unlawfully killed a human being, Carl Stanley Lackl, willfully, deliberately, maliciously and with premeditation. That is the third element if you were to so find. Section 1111 of Title 18 defines murder as follows: Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by any kind of willful, deliberate, malicious and premeditated killing is murder

in the first degree. Any other murder is murder in the second degree.

The government must prove beyond a reasonable doubt -- the next element here is the government must prove beyond a reasonable doubt that the defendants acted with malice aforethought. Malice aforethought is the state of mind that would cause a person to act without regard for life of another. To satisfy this element, the defendant must have acted consciously with the intent to kill another person. However, the government need not prove a subjective intent to kill on the part of the defendant. It would be sufficient to satisfy this element if it proved reckless and wanton conduct on the part of the defendant which grossly deviated from a reasonable standard of care such that he was aware of the serious risk of death. In order to establish this element, the government must prove that the defendant acted willfully with a bad or evil purpose to break the law. However, the government need not prove spite, malevolence, hatred or ill will toward the victim.

Fourth, premeditation. Finally, the government must prove beyond a reasonable doubt with respect to premeditated murder -- the final thing the government must prove beyond a reasonable doubt with respect to premeditated murder is that the defendants acted willfully, deliberated and with premeditation. And act is done with premeditation if it's done upon deliberation. In other words, premeditation means deliberating or thinking about whether to act before actually committing the crime as opposed to doing something instantaneously. In order to satisfy this element, the government

must prove that the defendants killed the victim only after thinking the matter over, deliberating whether to act before committing the killing. There is no requirement that the government prove that the defendants deliberated for any particular period of time in order to show premeditation. Willful, deliberate and premeditated simply means that the killing is done on purpose after a period of time for prior consideration. The duration of that period cannot be arbitrarily fixed. The time in which to perform a deliberate design varies as the minds and temperaments of individuals differ and according to the circumstances in which the individual may be placed. An interval of any time between the forming of the intent to kill and the execution of that intent which is of sufficient duration for the accused to be fully conscious of what he intended is sufficient to support a conviction for premeditated murder.

Again still as to Count 4, this statute, 18 United States Code, Section 1512, is designed to protect persons from retaliation for the appearance of witnesses or parties in criminal and civil federal proceedings and from retaliation for information given to law enforcement officers about federal crimes. The integrity of the federal system of justice depends upon persons giving truthful evidence and information free from the fear of retaliation. This statute is devised to make it unlawful for anyone to retaliate against someone who's been a witness, victim or informant or against anyone associated with a witness, victim or informant.

In order to satisfy its burden of proof as to Count 3, the

government must establish beyond a reasonable doubt each of the following two elements. First, that two or more people entered into the unlawful agreement as charged. That is that a conspiracy existed to kill another person with intent to prevent his communication to a law enforcement officer or judge. Second, that said killing is a murder as defined in 18 United States Code, Section 1111 in that the defendants with malice aforethought unlawfully killed a human being, Carl Stanley Lackl, willfully, deliberately, maliciously and with premeditation. And third, that the defendant knowingly and willfully became a member of that conspiracy. Earlier in these instructions, I explained the law and defined the terms regarding conspiracies. You are advised that the previous instructions regarding conspiracy including the instructions about the purpose of the conspiracy statute and membership in that conspiracy apply to the conspiracy charged in Count 3 as well. So I don't need to repeat the entire conspiracy charge. But it's the same principle as to conspiracy there as well.

Now Count 5. Total of nine counts. Both defendants are charged in Counts 1 through 7 and only the Defendant Byers is charged in Counts 8 and 9. Count 5. In Count 5, the defendants are charged with the substantive offense of using a firearm in furtherance of a crime of violence and aiding and abetting the use of that firearm in furtherance of such a crime. Count 5 of the superseding indictment alleges as follows. On or about July 2, 2007, in the State and District of Maryland, Patrick Albert Byers, Jr. and Frank Keith Goodman, the defendants herein, did knowingly use, carry and discharge

a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit, a conspiracy to use and cause to be used a facility in interstate commerce with intent that the murder of Carl Stanley Lackl be committed in violation of the laws of the State of Maryland which resulted in the death of Carl Stanley Lackl as charged in Count 1 of the superseding indictment which is incorporated herein. Furthermore, using and causing the use of a facility of interstate commerce with intent that the murder of Carl Stanley Lackl be committed in violation of the State of Maryland which resulted in the death of Carl Stanley Lackl is charged in Count 2 of the superseding indictment which was incorporated by reference herein. C, conspiracy to kill another person with intent to prevent the communication by any person to a law enforcement officer or judge of the United States relating to the commission or possible commission of the federal offense as set forth in Count 3 of this superseding indictment which is incorporated herein. D, killing another person with intent to prevent the communication by any person to a law enforcement officer or judge of the United States relating to the commission or possible commission of a federal offense as set forth in Count 4 of the superseding indictment which is incorporated herein. The relevant statute here is Title 18, United States Code, Section 924(c)(1)(a), subpart 3, which provides that any person who during and in relation to any crime of violence for which the person may be prosecuted in a court of the United States, uses or carries or discharges a firearm shall be guilty

of the crime.

We will now turn to the elements of the offense as set forth in Count 5 of the indictment. The government must prove each of the following elements beyond a reasonable doubt to sustain its burden of proving the defendants, both of them, guilty of Count 5. First, that the defendant committed a crime of violence which he might be prosecuted in a court of the United States. And second, that the defendant knowingly used, carried or discharged a firearm during and in relation to that crime of violence. To sustain its burden of proof under the aiding and abetting statute, the government must prove beyond a reasonable doubt that the defendant aided or abetted another whose conduct satisfies these elements. As I instructed you before, in order to aid or abet another to commit a crime, it is necessary that the defendant willfully and knowingly associate himself in some way with the crime and that he willfully and knowingly seek by some act to help make the crime succeed.

The first element the government must prove beyond a reasonable doubt is that the defendant committed a crime of violence for which he might be prosecuted in a court of the United States or aided and abetted another person who committed such a crime. The defendants are charged in Count 1 of the superseding indictment with conspiracy to use an interstate commerce facility in the commission of a murder for hire and in Count 2 with use of an interstate commerce facility in the commission of a murder for hire. The defendants are also charged in Count 3 of the superseding indictment with conspiracy

to kill another person with intent to prevent his communication to a law enforcement officer or judge relating to the commission or possible commission of a federal offense. And in Count 4 with killing another person with intent to prevent his communication to a law enforcement officer or judge relating to the commission or possible commission of a federal offense. I instruct you that each of these crimes is a crime of violence. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendants committed the crimes in Counts 1, Count 2, Count 3 or Count 4 as charged. So that is the first element of Count 5.

The second element of Count 5. The second element that the government must prove beyond a reasonable doubt is that the defendant knowingly used, carried or discharged a firearm in the furtherance of a crime of violence charged in Count 1 and Count 2 and Count 3 or Count 4 or that the defendant knowingly aided and abetted another person in doing so. A firearm is any weapon which will or is designed or may be readily converted to expel a projectile by the action of an explosive. In order to satisfy this element, the government must prove that the defendant had possession of the firearm and that such possession was in furtherance of a crime of violence. Possession means that the defendant or the person he aided and abetted either had physical possession of the firearm on his person or that he had dominion and control over the place where the firearm was located and had the power and intention to exercise control over the firearm. To possess a firearm in furtherance of a crime of violence means that the

firearm helped forward, advance or promote the commission of the crime. The mere possession of the firearm at the scene of the crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied. For this element, you must also find that the defendant or the person he aided and abetted possessed the firearm knowingly. This means that he possessed it purposely and voluntarily and not by accident or mistake. It also means that he knew that the weapon was a firearm as we commonly use the word. However, the government is not required to prove that the defendant knew he was breaking the law.

Count 5 of the superseding indictment charges that the defendants possessed a firearm in furtherance of four predicate crimes. Counts 1, 2, 3 and 4. If the government falls to prove that a defendant committed at least one of these predicate crimes as set forth in those four counts, then you must find the defendants not guilty on Count 5. On the other hand, the government need not prove all of the predicate crimes for you to find the defendant guilty on Count 5. It is sufficient if you find beyond a reasonable doubt that the defendants, both of them or either one of them committed at least one of the predicate offenses charged in Counts 1, 2, 3 and 4 in order to convict a defendant on Count 5. And as I've said and I'll say again, you have to judge Byers and Goodman individually in terms of their involvement. However, in order to convict a defendant on this count, all 12 of you must agree on the specific predicate offenses in furtherance of which the defendant possessed a firearm. Accordingly,

in order to find a defendant guilty in Count 5, all of you must agree that a defendant possessed a firearm in furtherance of a crime of violence charged in Count 1. All of you must agree that the defendant possessed a firearm in furtherance of a crime of violence charged in Count 2. All of you must agree that the defendant possessed a firearm in furtherance of the crime charged in Count 3 or all of you must agree that the defendant possessed a firearm in furtherance of a crime of violence charged in Count 4. Of course, it is also possible that all of you may also agree that the defendant committed more than one of these predicate offenses.

Count 7. Now I'm going to charge you now as to Counts 6 and 7. I'm going to go to Count 7 first and then Count 6. In Count 7, the defendants are charged with conspiracy to use a firearm in furtherance of a crime of violence and again both defendants are charged in Counts 1 through 7. Only Defendant Byers is charged in Counts 8 and 9. We're on Count 6 and 7 now. Count 7. In Count 7, the defendants are charged with conspiracy to use a firearm in furtherance of a crime of violence. Specifically, Count 7 of the superseding indictment alleges as follows: From on or about May 18, 2007 up through and including September 5, 2007 in the State and District of Maryland, Patrick Albert Byers, Jr. and Frank Keith Goodman, the defendants herein, did knowingly, intentionally and unlawfully combine, conspire, confederate and agree with each other and with other persons known and unknown to the grand jury to knowingly use firearms during and in relation to crimes of violence

for which they may be prosecuted in a court of the United States as set forth in Counts 1, 2, 3 and 4 of the superseding indictment which are incorporated by reference herein in violation of 18 United States Code, Section 924(c). The relevant statute is Title 18, United States Code, Section 924(c)(1)(a), subpart 3, which provides that any person who during and in relation to any crime of violence for which the person may be prosecuted in a court of the United States, uses or carries or discharges a firearm shall be guilty of a crime. Whereas Count 5 of the superseding indictment charges the defendants with using, carrying and discharging a firearm in furtherance of a crime of violence in violation of the statute, Count 7 charges the defendants with conspiring to use a firearm in furtherance of a crime of violence.

We will now turn to the elements of this offense on Count 7. In order to satisfy its burden of proof as to Count 7, the government must establish beyond a reasonable doubt each of the following two elements. First, that two or more people entered into an unlawful agreement as charged, that is that a conspiracy existed to use a firearm in furtherance of a crime of violence for which the defendants might be prosecuted in a court of the United States. And second, that the defendant knowingly and willfully became a member of that conspiracy. Earlier in these instructions, I explained the law and defined the terms regarding conspiracies. You are advised that the previous instructions regarding conspiracy including the instruction about the purpose of the conspiracy statute and membership of the

conspiracy apply to the conspiracy charged in Count 7 as well. So I'm not going to repeat it here. You have three different times it's used the same instructions on conspiracy.

Count 6. Count 6 charges the defendants with causing the death of Carl Stanley Lackl through the use of a firearm in the course of the violation of Title 18, United States Code, Section 924(c) charged in Count 5. In other words, Count 6 charges the defendants with committing murder in the course of committing the crime charged in Count 5. Count 6 reads as follows: On or about July 2, 2007 in the State and District of Maryland, Patrick Albert Byers, Jr. and Frank Keith Goodman, the defendants herein, in the course of using, carrying and discharging a firearm during and in relation to a crime of violence in violation of 18 United States Code, Section 924(c) as set forth in Count 5 of this superseding indictment and incorporated by reference herein, did cause the death of a person through the use of a firearm which killing is a murder as defined in 18 United States Code, Section 1111 in that the defendants with malice aforethought unlawfully killed a human being, to wit, Carl Stanley Lackl, willfully, deliberately, maliciously and with premeditation. The relevant statute is Title 18, United States Code, Section 924(j) which provides that a person who in the course of a violation of Subsection C of this statute causes the death of a person through the use of a firearm if the killing is a murder as defined in Section 1111 is guilty of the crime. As I stated before, Section 1111 of Title 18, United States Code defines murder as follows: Murder is the unlawful

killing of a human being with malice aforethought. Every murder perpetrated by any kind of willful, deliberate, malicious and premeditated killing is murder in the first degree. Any other murder is murder in the second degree.

As to the elements of Count 6, the government must prove each of the following elements beyond a reasonable doubt to sustain its burden of proving the defendants guilty of Count 6. First, that the defendant committed the crime charged in Count 5 as either a principal participant or as an aider and abettor. That is that the defendant committed a crime of violence which he might be prosecuted in a court of the United States and knowingly used, carried or discharged a firearm during or in relation to one or more of these predicate crimes. Second, that the defendant either as a principal participant or as an aider and abettor through the use of firearms caused the death of Carl Stanley Lackl. Third, that in causing the death of Mr. Lackl, the defendant acted willfully and with malice aforethought and fourth, that the defendant acted with premeditation.

As I indicated earlier, Count 6 charges the defendants with committing a murder during the course of committing the crime charged in Count 5. Accordingly, if upon all the evidence you find that the government has failed to prove Count 5 beyond a reasonable doubt as to a particular defendant, then you will proceed no further as to that defendant on Count 6. You should only consider the question of whether the defendant committed the offense charged in Count 6 if you first find a particular defendant guilty under Count 5 as charged.

The second element, still on count 6, the second element the government must prove is that the defendants killed the victim, Carl Stanley Lackl, through the use of a firearm either as principal participants or as aiders and abettors. In this regard, it is the government's burden to prove that the defendants' use or the use of someone whom the defendants aided and abetted of a firearm was a direct cause of Carl Stanley Lackl's death. This means simply that the government must prove that the defendants or someone the defendants aided and abetted inflicted an injury or injuries upon Carl Stanley Lackl using a firearm from which Carl Stanley Lackl died. It is not necessary that the injuries inflicted by the use of the firearm alone caused the death of Mr. Lackl. It is instead sufficient that the government proves that the injury or injuries resulted from the defendants' use of the firearm was a cause of Mr. Lackl's death. As I stated before, the defendants are charged as principals and as aiders and abettors. In order to aid or abet another to commit a crime, it is necessary that the defendant wilfully and knowingly associate himself with some way with the crime and that he willfully and knowingly seek by some act to help make the crime succeed.

The next element the government must prove beyond a reasonable doubt as to Count 6 is that the defendant acted willfully with malice aforethought and with premeditation. Earlier in my instructions I advised you as to the meaning of the terms willfully, malice aforethought and premeditation and those previous instructions apply equally to this count of the indictment as well. I don't need

to repeat those.

Now we're as to Count 8. Count 8 and 9 only charge the defendant, Patrick Albert Byers, Jr. Count 8 charges the defendant with unlawful possession of a firearm. Count 8 reads specifically as follows: On or about March 4, 2006 in the State and District of Maryland, Patrick Albert Byers, Jr., the defendant herein, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly and unlawfully possess a firearm, to wit, one Sigsauer .40 caliber semi-automatic handgun, serial number AH-13333 in and affecting commerce. The relevant statute here is Section 922(g)(1) of Title 18 of the United States Code. Section 922(g)(1) provides in part that it shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess or affect in commerce any firearm.

Now as to Count 8, the elements of the offense are the government must prove each of the following elements beyond a reasonable doubt in order to sustain its burden of proving the defendant, Patrick Albert Byers, Jr. guilty. First, that prior to March 4, 2006, the Defendant Byers had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. Second, that the defendant knowingly possessed the firearm as charged and third, that the possession charged was in or affecting interstate or foreign commerce.

The first element the government must prove beyond a

reasonable doubt before you can convict is that before the date the defendant, Patrick Byers, is charged with possessing the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year. The parties have stipulated that the defendant was convicted of a crime in state court and that this crime is punishable by imprisonment for a term exceeding one year. It has also been stipulated that this felony conviction occurred prior to the time that the defendant is alleged to have possessed the weapon charged in the indictment. You may thus accept this fact and not require the government to produce any further proof upon the matter.

The second element which the government must prove beyond a reasonable doubt is that on or about the date set forth in the indictment, the defendant, Patrick Byers, knowingly possessed a firearm specified in Count 8, to wit, one Sigsauer .40 caliber semi-automatic handgun. As I instructed you previously, a firearm is any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive. To possess means to have something within a person's control. This does not necessarily mean that the defendant had to hold the firearm physically, that is have actual possession of it. As long as the firearm is within his control, the defendant possesses it. If you find that the defendant either had actual possession of the firearm or that he had the power and intention to exercise control over it even though it was not in his physical possession, you may find the government has proven possession.

The law also recognizes that possession may be sole or joint. If one person alone possesses it, that is sole possession. However, it is possible that more than one person may have the power and intention to exercise control over the firearm. This is called joint possession. If you find that the defendant had such power and intention, then he possessed the firearm under this element even if he possessed it with another. Proof of ownership of the firearm is not required. To satisfy this element, you must also find that the defendant knowingly possessed the firearm. This means that he possessed the firearm purposely and voluntarily and not by accident or mistake. It also means that he knew that the weapon was a firearm as we commonly use the word. However, the government is not required to prove that the defendant knew that he was breaking the law. You are further instructed that the government is not required to prove that the firearm was operable in order to prove that it was a firearm as I have just defined for you.

The third element the government must prove as to Count 8 beyond a reasonable doubt is that the firearm the Defendant Byers is charged with possessing was in or affecting interstate commerce. There is a stipulation that the firearm in question was in or affecting interstate commerce.

Now finally, as to Count 9, Count 9 charges the defendant, Patrick Byers, Jr. with possession of a firearm in furtherance of a drug trafficking crime. The count reads as follows: On or about March 4, 2006, in the State and District of Maryland, Patrick Albert

Byers, Jr., the defendant herein, did knowingly possess a firearm, to wit, one Sigsauer .40 caliber semi-automatic handgun, serial number AH-13333 in furtherance of a drug trafficking crime for which he may be prosecuted in a court of the United States, to wit, conspiracy to possess with intent to distribute controlled substances in violation of Title 21, United States Code, Section 846. The relevant statute is Title 18, United States Code, Section 924(c), which provides that any person who in furtherance of any drug trafficking crime for which a person may be prosecuted in a court of the United States possesses a firearm shall be guilty of the crime.

As to Count 9, the government must prove each of the following elements beyond a reasonable doubt to sustain its burden of proving the defendant guilty of Count 9. First, that the defendant committed a drug trafficking crime for which he may be prosecuted in a court of the United States. And second, that the defendant knowingly possessed a firearm, to wit, one Sigsauer .40 caliber semi-automatic handgun in furtherance of one or more of those predicate crimes. In these counts, the Defendant Byers is charged with possessing a firearm or firearms in furtherance of a drug trafficking crime for which he might be prosecuted in a court of the United States. To wit, conspiracy to possess with intent to distribute a controlled substance in violation of Title 21, United States Code, Section 846. If upon all the evidence, you find that the government has failed to prove beyond a reasonable doubt that the defendant violated Title 21 United States Code, Section 846, then you will proceed no further as to that

defendant on Count 9. You should only consider the question of whether the defendant, Byers, possessed a firearm in furtherance of a drug trafficking crime if you find that the government has proven that the defendant violated Title 21, United States Code, Section 846.

The first element the government must prove as to Count 9 beyond a reasonable doubt is that the defendant, Patrick Byers, committed a drug trafficking crime which he might be prosecuted in a court of the United States. I instruct you that conspiracy to possess with intent to distribute a controlled substance in violation of Title 21, United States Code, Section 846 -- I instruct you that conspiracy to possess with intent to distribute a controlled substance is a drug trafficking crime. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed that crime and I would note that that language was slightly left out there. It was a typographical error there when you look at Instruction Number 81.

You are instructed that violation -- this is covered in Number 82 to make it more clear. You are instructed that a violation of Section 841(a)(1) of Title 21, United States Code is an offense defined in this subchapter and that Section 841(a)(1) provides that it shall be unlawful for any person knowingly or intentionally to possess with intent to distribute a controlled substance. Accordingly, you are instructed that it is a violation of Section 846 of Title 21 of the United States Code for any person to conspire to distribute or to conspire to possess with intent to distribute any controlled

substance.

I will now define for you the concept of possession with intent to distribute and distribution. Although I'm defining these concepts for you, remember that in order for you to find a defendant guilty of conspiring to commit one of these crimes, you need not find that the objects of the conspiracy were actually accomplished. Only that the underlying crimes were actually committed. You need simply find that the defendant conspired to commit those crimes as defined previously in these instructions.

Actual possession is what most of us think of as possession. That is having physical custody or control of an object. For example, if a person had drugs on his person, you may find that he had possession of the drugs. However, a person need not have actual physical custody of an object in order to be in legal possession of it. If an individual has the ability to exercise substantial control over an object that he does not have in his physical custody, then he is in possession of that item. An example of this from everyday experience would be the person's possession of items he keeps in the safe deposit box of his bank. Although the person does not have physical custody of those items, he exercises substantial control over them and so has what is known as constructive possession of them. Possession of drugs cannot be found solely on the ground that a person was near or close to the drugs nor can it be found simply because a person was present at a scene where drugs were involved or solely because a person associated with someone who does control the drugs or

the property where they are found. However, these factors may be considered in connection with other evidence. More than one person can have control over the same drugs. If this is so, then these people have what is called joint possession. Joint possession is no different from sole possession. An intent to distribute means that a person had control over drugs with the state of mind for purpose to transfer them to another person. Since you cannot read a person's mind, inferences may be made from behavior.

The word, distribute, means to deliver a controlled substance. Deliver is defined as the actual constructive or attempted transfer of a controlled substance. Simply stated, the words distribute and deliver mean to pass on or to hand over to another or to cause to be passed on or handed to another or to try to pass on or hand over to another drugs. Distribution does not require a sale. Activities in furtherance of the ultimate sale such as vouching for the quality of the drugs, negotiating for or receiving the price and supplying or delivering the drugs may constitute distribution. In short, distribution requires a concrete involvement in the transfer of drugs. Keeping this general definition of distribution in mind, you should make your decision about whether the defendant conspired to distribute controlled substances from all the evidence presented. Again you are reminded that in order to find a defendant guilty of conspiracy to possess with intent to distribute controlled substances, you need not find that the defendant actually distributed or possessed controlled substances. Instead you need simply find that he conspired

to possess controlled substances with intent to distribute by agreeing to engage in an act in furtherance of a scheme to possess and distribute controlled substances.

The second element -- we're still on Count 9. The second element that the government must prove beyond a reasonable doubt as to Count -- I'm sorry, this is as to Count 8 -- is that the defendant, Patrick Byers, knowingly possessed a firearm in furtherance of a drug trafficking crime. A firearm is any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive. In order to satisfy this element, the government must prove that the defendant had possession of the firearm and that such possession was in furtherance of the drug trafficking crime. Possession means that the defendant either had physical possession of the firearm on his person or that he had dominion and control over the place where the firearm was located and had the power and intention to exercise control over the firearm. To possess a firearm in furtherance of a drug trafficking crime means that the firearm helped forward, advance or promote the commission of the crime. The mere possession of the firearm at the scene of the crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied. For this element, you must also find that the defendant possessed the firearm knowingly. This means that he possessed it purposely and voluntarily and not by accident or mistake. It also means that he knew the weapon was a firearm as we commonly use the word. However,

the government is not required to prove that the defendant knew he was breaking the law.

Now finally, we're about to conclude. At this stage, the question of possible punishment of either defendant is not of concern to the jury and should not in any sense enter into or influence your deliberations. The duty of imposing sentence as to Mr. Goodman rests exclusively upon this Court and as to Mr. Byers is not a matter that should affect your deliberations at this phase. Your function is to weigh the evidence in the case and determine whether or not a defendant is guilty beyond a reasonable doubt solely upon the basis of such evidence. Under your oath as jurors, you cannot allow a consideration of the punishment which may be imposed upon a defendant if he is convicted to influence your verdict in any way or in any sense enter into your deliberations.

The government to prevail must prove the essential elements by the required degree of proof as already explained exhaustively in these instructions. If it succeeds, your verdict should be guilty. If it fails, it should be not guilty. To report a verdict, it must be unanimous. Your function is to weigh the evidence in the case and determine whether or not each defendant is guilty solely upon the basis of such evidence. Each juror is entitled to his or her opinion. Each should however exchange views with his or her fellow jurors. That is the very purpose of jury deliberations, to discuss and consider the evidence, to listen to the arguments of fellow jurors, to present your individual views, to consult with one another and to

reach an agreement based solely and wholly on the evidence if you can do so without violence to your own individual judgment. Each of you must decide the case for yourself after consideration with your fellow jurors of the evidence in the case. But you should not hesitate to change an opinion which after discussion with your fellow jurors appears erroneous. However, if after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you are not to yield your convictions simply because you are outnumbered. Your final vote must reflect your conscious conviction as to how the issues should be decided. Your verdict whether guilty or not guilty must be unanimous.

Upon retiring to the jury room, Juror Number 1 will be your foreperson. He is the person who will preside over your deliberations and who will be your spokesperson here in court. The foreperson runs the meeting, controls deliberations and communicates with the Court. A verdict form has been prepared for your convenience and I'm going to go over that with you in a second. In fact I'll go over that now with you. The verdict form simply says Count 1, with respect to Count 1, the superseding indictment which charges a conspiracy to use a facility of interstate commerce in the commission of a murder for hire of Carl Stanley Lackl, how do you find the defendant, Patrick Byers? Not guilty or guilty. How do you find the defendant, Frank Goodman? Not guilty or guilty. Count 2, with respect to Count 2 of the superseding indictment which charges using a facility of interstate commerce in the commission of a murder for hire of Carl Stanley Lackl,

once again how do you find the defendant, Patrick Byers? Not guilty or guilty. How do you find the defendant, Frank Goodman? Not guilty or guilty. Count 3, with respect to Count 3 of the superseding indictment which charges a conspiracy to kill another person with intent to prevent his communication to a law enforcement officer or judge of the United States related to the commission or possible commission of a federal offense, how do you find the defendant, Patrick Byers? Not guilty or guilty. How do you find the defendant, Frank Goodman? Not guilty or guilty. Same as to Count 4. With respect to Count 4 of the superseding indictment which charges killing another person with intent to prevent his communication to a law enforcement officer or judge of the United States related to the commission or possible commission of a federal offense. Once again how do you find each defendant? Not guilty or guilty. Count 5, with respect to Count 5, which charges using a firearm in furtherance of a crime of violence and aiding and abetting the use of a firearm in furtherance of a crime of violence. Same breakdown. Count 6 which charges causing the death of Carl Stanley Lackl for the use of a firearm in the course of commission of Count 5. Once again, it's the same breakdown as to each defendant. Count 7, with respect to Count 7 charging a conspiracy to use a firearm in furtherance of a crime of violence. Same breakdown. And finally, Counts 8 and 9 only as to the Defendant Byers. With respect to Count 8 of the superseding indictment which charges the unlawful possession of a firearm by a prohibited person, how do you find the defendant, Patrick Byers? Not

guilty or guilty. And finally, with respect to Count 9, charging the possession of a firearm in furtherance of a drug trafficking crime, how do you find the defendant, Patrick Byers? Not guilty or guilty. And it will be signed by your foreperson and dated.

If it becomes necessary during deliberations to communicate with the Court, you may send a note by the marshal signed by your foreperson or by one of the members of the jury. It will be signed by your foreperson. No member of the jury should communicate with the Court by any means other than a signed writing and I will not communicate with any member of the jury on any subject touching on the merits of the case other than in writing or here open in court. What I do if there's any question, you give it to -- your foreperson will sign the note. The foreperson will give it to the bailiff outside of the jury room. That will be given to me. I will call the lawyers and the lawyers and the parties will come back into the courtroom and we will address the question here in open court.

You will note from the oath about to be taken by the marshal that he, too, as well as all other persons is forbidden to communicate in any way or manner with any member of the jury on any subject touching on the merits of the case. He will just merely take the note and see that I get it.

Bear in mind that you may not reveal to any person, not even to me how the jury stands numerically or otherwise on the question of the guilt or innocence of the accused persons on any particular count until after you have reached a verdict. You do not send a note to me

saying that you have a particular vote with respect to one matter or not. You just send a question out.

Ultimately, when you reach your verdict, you have to be unanimous as to each one of these counts and you have to deliberate as to each individual defendant. You'll finish the verdict form. You will then indicate to the marshal that you have a verdict. You do not give the verdict sheet to the marshal. You tell the marshal you have a verdict. The marshal then will advise Ms. Martina West, the deputy clerk of court and I will notify the lawyers and we'll come back in here to the courtroom. She will then take roll and she will ask if you have reached a verdict. And the foreperson, you will say yes and the foreperson and she'll ask, who shall speak for you and the foreperson will say I shall speak for the jury. At that time she will indicate that the verdict sheet, it's desired for review by the Court. The foreperson of the jury will give her the verdict sheet. It will be brought to me. I will look at it. Then I will hand it back to her and she'll hand it back to your foreperson and then she will call for a rendering of the verdict on the charges in this case.

Counsel, if you will approach the bench, please?

(Bench conference:)

THE COURT: Any objections have been preserved and exceptions to the instructions. I just call people up to make sure there haven't been any mistakes or additional objections from my reading of the instructions.

MR. PURCELL: No objections, Your Honor.

THE COURT: Any objection? Any further objection?
MR. PURPURA: No. Thank you.
THE COURT: All right. You all may return.
MR. PURPURA: Judge, two quick questions. The alternates, you're going to --
THE COURT: What I'm going to do is I'm going to tell the alternates to stand by and they're not dismissed yet and they must stand by and remain on call until the conclusion of the case and tell them that they should not listen to any press reports about the case. That the deputy clerk of court will contact them if they need, if there are any further services needed, that they're absolutely to stand by as alternates and that they absolutely cannot, you know, they're admonished not to read any press reports about the case, any radio or television commentary and that they should just tell their family members just to seal themselves off and await further contact from the Court until there's a conclusion of the case.
MR. PURPURA: And the last question is you initially told the jury they were not sitting on Friday. I would hope they're --
THE COURT: They're going to deliberate tomorrow.
MR. PURPURA: Good.
THE COURT: I'm going to tell them that they're going to deliberate tomorrow. That's right. I told them they wouldn't. But I think they should understand now they're not going to have three days off before they come back to deliberate.
MR. PURPURA: Sounds good to us, judge. Thank you.

THE COURT: All right.

(In open court:)

THE COURT: All right. Now, ladies and gentlemen, a few housekeeping matters. First of all, as to the four alternates, you all are not dismissed yet at this time. You will not be part of deliberations obviously. But as to the four alternates, I want to thank you first of all for your service. As you heard me mention back on March the 23rd when the other persons were not selected, the other potential jurors, I indicated that this Court is very much involved in international exchanges with other courts around the world. In fact I'll be leaving for Russia in about three weeks with two state judges and we're part of an exchange program and the Russian judges will be here in September and the jury system is our greatest hallmark of our judicial system and it is revered and modeled by many countries around the world. Some of our greatest critics still marvel at our jury system. So you have been part of a very important process here over several weeks. But you're now going to be excused, but you're not dismissed yet. You are to stand by and to remain on call in the event that you would be needed to come back. So it is very important that you not listen to any television or radio coverage about this case, that you not read any newspapers. As tempting as it will be, you are not to discuss it with family members and if family members say well, how did it go, you're not with the jury deliberating now, you have to say don't talk to me about it, I've still got this protective cocoon around me and you can't talk to them about it at all until the Court

provides me further notice and the Court will then be getting back in contact with you with respect to whether the case is concluded or not. So I want to thank you sincerely for your service in that regard. Madam Clerk, with respect to certificates, they will --

THE CLERK: We mail them.

THE COURT: They will be mailed as well. And once again, obviously, your identities are known only to me and to the clerk of the court and remain confidential. But your juror certificates as a token of our appreciation will be mailed to you. But again Ms. West will be back in touch with you. But I can't emphasize enough it's very important that you remain on standby in the event that one of the 12 jurors will be taken ill suddenly or something, we would need to call an alternate juror back and the lawyers in the case both the government and the defense feel very strongly about that and I'm going to make sure you understand, you need to stand by just in the event you need to be called back. So with that, you are excused. And hold on just one second. Counsel, approach the bench one second, please.

(Bench conference:)

THE COURT: With respect to the four alternate jurors, they're going to be escorted back to their cars by the marshal service. But because of certain security considerations, there's been some suggestion by the marshals that they need to go into the jury room with the 12 jurors. They can't do that. Once the jury is sworn, only those 12 jurors go back in the jury room. So you're going to need to --

THE CLERK: I can put them in Judge Garbis' jury room.

THE COURT: That's fine. That's what you'll do. You'll take the four jurors, the alternates, have them stay in Judge Garbis' jury room and that will need to be done before the bailiff is sworn. How long will it take to do that now?

THE CLERK: They got to get their lunches out of there and their personal belongings out of there.

THE COURT: All right. Then that's what we're going to do. We're going to hold for a minute and we're going to have them go get their lunches and personal belongings and then they can go out the door in the hallway and go to another jury room.

THE CLERK: Right.

THE COURT: So we're just going to stand fast for a minute and we're going to do that before we swear the bailiff.

(In open court:)

THE COURT: All right. Ladies and gentlemen, as to that, your lunches however have arrived and you four are going to take steps now for you all to secure your personal belongings and if you'll go with Ms. West. Everyone wait for a minute until Ms. West comes back. As with many things, nothing else is going to happen until Ms. West comes back here. All right. You four, thank you. Alternate Number 1, 2, 3 and 4, thank you very much.

I will tell you, ladies and gentlemen, while we're waiting for Ms. West that I think it probably should be obvious to you that unlike the other previous weeks we have not been sitting on Fridays

taking testimony, your deliberations will start today and if you need to come back tomorrow, whatever. So deliberations start now and continue and then go at a pace as you desire. But it is Friday is no longer an off day. There are no off days once you start deliberating. You just let me know what you want to do and we can talk about that later. Counsel, if you'll approach the bench for one second while we're waiting?

(Bench conference:)

THE COURT: What my thought is on today's deliberations is that once they start to deliberate, they'll have lunch, they deliberate. Around 6:00 it would be my intention, 5:30, 6:00 would be my intention to send them in a note indicating that -- they certainly can continue to deliberate, but they certainly can go home and come back the next day. That's how I normally handle it. I don't tell them that until 5 or 5:30. I would not intend to keep them past 5:30. Is that agreeable to the government?

MR. PURCELL: Yes, sir.

THE COURT: Is that agreeable with the defense?

MR. PURPURA: Fine.

THE COURT: All right. So I won't tell them that now. But around 5 or 5:30, I'll indicate to them you're free to go and come back again tomorrow and they just take the same steps that they normally do.

MR. PURCELL: Just you might want to make it clear to them you don't mean Saturday and Sunday.

THE COURT: No. I'm going to let them know that we -- I don't need to say that to them yet. I'll just wait and see, you know. I'm not going to address the matter of the weekend, Mr. Purcell, because that implies they need to -- just let them do what they're going to do and then I will make sure they know they come back and then if for some reason they deliberate all day Friday and haven't reached a verdict, then I will tell them they're excused for the weekend and have them come back Monday morning.

(In open court:)

THE COURT: All right. With that, Ms. West will swear the bailiff. The bailiff will come forward, please.

(Bailiff sworn.)

THE COURT: All right. Ladies and gentlemen, you may now begin your deliberations. You'll be sent a copy of the tape recording of my instructions in case you want to listen to them again as well as a copy of the written instructions and the verdict sheet and the exhibits will be brought in to you and with that, you all may begin your deliberations.

(Jury excused.)

THE COURT: All right. Just with that, I want to compliment the lawyers on a vigorously tried case and the lawyers were very professional and I want to also note that we scheduled this case back on March of 2008 and stayed right with the schedule right along the way and exactly a year later, this case was tried right on time and I want to compliment both the government lawyers and the defense

lawyers, court-appointed counsel in this case for a very vigorous presentation on both sides and I want to compliment the lawyers for their professionalism and their hard work in this case and we are right on schedule now. It's very important to keep this case on track, important to the defendants and for the government obviously and to everyone involved. So with that, I compliment the lawyers. Everyone needs to just stand by. Is there anything further from the point of view of the government?

MR. PURCELL: No. Thank you, Your Honor.

THE COURT: Anything further from the point of view of defense counsel?

MR. PURPURA: No. Thank you.

MR. DAVIS: No, Your Honor.

THE COURT: All right. This Court stands in recess awaiting the return of the jury.

(Proceedings concluded.)

I, LISA K. BANKINS, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____
Signature of Court Reporter/ Transcriber Date

_____
Typed or Printed Name